

2009 HOUSE JUDICIARY

HB 1430

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1430

House Judiciary Committee

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Hearing Date: 1/27/09

Recorder Job Number: 7854

Committee Clerk Signature

*DeMose*

Minutes:

**Chairman DeKrey:** We will open the hearing on HB 1430.

**Rep. Blair Thoreson:** Sponsor, support. It deals with successor corporation asbestos related liability. This bill came about due to a situation with a corporation who had purchased, many years earlier, a company that had worked in the area of asbestos briefly and as such had suffered penalties which had suffered penalties that shouldn't have been assessed.

**Rep. Griffin:** Would this bill benefit anyone in ND.

**Rep. Thoreson:** I believe it would. In the situation we will be discussing here, that company has people who are in the state and are retired workers from that company, who are relying on that company for their pensions and benefits. It would also benefit our state in case some other company, of which I'm not aware of anyone at this time, who has this problem arise. I believe we should have a protection in place for this situation.

**Chairman DeKrey:** Thank you. Further testimony in support.

**Rep. Larry Klemin:** Sponsor, support. For about the past twenty years our law firm has been representing clients who have been sued in asbestos litigation in ND and SD. Over the course of this 20 years, clients have come and gone. We used to represent a client that had made brake shoes, and in the past, asbestos was used in these brakes because of the heat. That

company was subsequently purchased by another company, who then took over, that had its own liability because it was another brake company. It also assumed the previous liabilities of the company I was representing. Well, the successor company is no longer in business; they filed bankruptcy due primarily, maybe exclusively to the fact that they were sued all over the company over asbestos in their brakes. Neither one of those companies now exist at all, and there are many, many examples like that that have had that happened in this industry, with companies being sued relating to asbestos-related injuries that are alleged in these lawsuits. Typically, a lawsuit in ND will have either a 40 defendants in one lawsuit, all of which are alleged to have caused the injury to the plaintiff for exposure to asbestos, no matter how remote. Asbestos litigation can be in the area of brake shoes or insulation that was used in many buildings in ND; around pipes, in the ceilings, etc. which is perfectly safe as long as it's not disturbed. Because it's disturbed, then it gets into the air and could affect somebody. This bill addresses the successor liability issue; how far should successors be liable and to what extent. There are more people who are going to testify to that more fully. All of the companies that I represented in the past 20 years, sold products in ND, that may or may not have contained asbestos in the past. Some of them are still, one of the very large companies that sold a lot of business in ND, as well as throughout the world, all of those companies are affected. They don't have to be domiciled here to be affected.

**Rep. Delmore:** Aren't asbestos lawsuits different because it can take 10, 15 or even 40 years from now before I realize that health liability is brought on me. It's not an immediate thing that I've been exposed to asbestos, so that I know right away where it came from and what happened. Isn't there a long life span with this?

**Rep. Klemin:** That's true to the extent that the diseases associated with asbestos are long-term in developing; typically having problems with the lungs. So these things do take a long

time to develop. This bill doesn't affect that as far as I understand it. It's just the fact the extent to which a successor company is liable for the exposure of the previous company.

**Rep. Delmore:** So if I buy your company and you are subject to liability, now because I bought you out, I have no liability to someone who may have been damaged.

**Rep. Klemin:** I don't think that is the intent of this bill. The intent of the bill is to limit the dollar amount that the total exposure to what you paid for that company.

**Rep. Dahl:** Does this bill essentially limit the right of a plaintiff to be made whole, to some extent.

**Rep. Klemin:** It could, it's a question of how long should a new company be held liable for the conduct of the company it bought.

**Chairman DeKrey:** Thank you. Further testimony in support.

**Jeb Oehlke, ND Chamber of Commerce:** Support (attachment).

**Rep. Delmore:** You've listed the Chambers that are supporting this. I don't see Fargo or Grand Forks listed there, is there a reason for that.

**Jeb Oehlke:** The Fargo Chamber is listed. The Grand Forks chamber didn't respond.

**Rep. Delmore:** Are you aware of any large cases in ND where this bill would have an effect.

**Jeb Oehlke:** I do not believe, at this time, there are any. It also wouldn't apply to any lawsuits that have already been started.

**Rep. Griffin:** Are you aware of any companies currently in ND that this legislation would affect.

**Jeb Oehlke:** I can't. There is only one company that I know of that it applies to. You will hear of the situation shortly. There is nothing that I know of, but that doesn't mean there isn't something.

**Rep. Griffin:** Are there any employees from these companies living in ND.



**Jeb Oehlke:** I don't believe that there are any current employees of this company living in ND.

**Rep. Wolf:** On the second page you list all these different chambers, can you just explain to me the procedure that the ND Chamber went through to look into this matter. How did you find out how the chambers felt about this issue. How did Minot support this bill.

**Jeb Oehlke:** The organization puts out a sheet called the ND Chamber of Commerce Policy Statements. We have several policy statements.

**Rep. Wolf:** Do you notify all the chambers and tell them that these are the bills we're looking at, or will be testifying in support of or against. Do you get that specific in telling your chambers. Does my chamber of commerce that you're down here testifying in favor of this specific bill.

**Jeb Oehlke:** They might. We have a website where we list what we're in support of, testifying on.

**Rep. Zaiser:** I am assuming that you don't poll each and every member of each individual chamber about the legislation.

**Jeb Oehlke:** Yes.

**Rep. Zaiser:** If you polled each member of that 6500, would you get unanimous support.

**Jeb Oehlke:** I don't know if we would get 100% support.

**Rep. Zaiser:** My point is that it is implied that the entire chamber is for this legislation.

**Jeb Oehlke:** The overwhelming majority of our members are businesses. The board of directors of the local chambers of commerce speak for their members.

**Rep. Klemin:** One thing I forgot to mention is that these asbestos lawsuits are all brought in state court. The defendants aren't able to remove it to federal court like they can in some other cases because every one of those cases in state court, there are between four to six ND companies that are joined as defendants, who are alleged to have been directly responsible.

My point is that there are ND companies who are sued in court now in ND, who are alleged to have some liability for asbestos exposure. They would be affected if they were purchased by some other company; if the successor were purchased by a ND company, they would be enjoined by the parties.

**Chairman DeKrey:** Thank you. Further testimony in support of HB 1430.

**Mark Behrens, American Legislative Exchange Council:** Support (2 attachments).

**Rep. Zaiser:** In the states where you have passed legislation, do any of these states have injured workers that were affected by asbestos or asbestos-related companies.

**Mark Behrens:** There are substantial number in Texas, Mississippi, and Ohio; they were the first state to have cases which are over 90% or more that are related to asbestos. We worked with trial lawyers in other states to recognize this problem. We've never seen anybody in a trial come forward in any of these states, and testify that it's fair to a company that never made this product should have to pay \$600 million dollars. It's preposterous. We want to make sure that in this bill, it is limited in scope, so it provides fairness to the company that is in this unique situation; without removing the responsibility of the company that made or sold that asbestos product. They are still fully liable. Those are the companies that trial lawyer should focus on. We want to make sure that the bill only does what it is intending it to do and doesn't apply to the people who made the product.

**Rep. Zaiser:** Do you know of any victims or any asbestos-related company that are here in North Dakota now.

**Mark Behrens:** There are companies in ND which will be affected by the bill. I don't know about victims, it's possible. It is certainly critically important to the dozen or so families of retirees in the state, because this company is in a real precarious financial condition. Looking at where we worked on this, most of the states that have passed it have not been states

where Crown has operations. The people look to this and say that this is an unfair situation.

This company has paid more than its fair share for something that they never did anything wrong, and it's really a fairness issue that is incurred today in the states where they don't have operations.

**Rep. Zaiser:** You listed those states which were heavily involved in industrial products. Are there some states that have passed this legislation that are not presently and never looked into asbestos-related products.

**Mark Behrens:** Yes, we've gotten laws passed in TX, FL, and MS and there were plants in those states. After we got this bill passed in MS, they built manufacturing plants in MS and started creating jobs because of the bill's passage. Georgia, PA and OH they don't have much.

**Rep. Zaiser:** I'm interested in those states that had no asbestos-related industries. Were there any victims or any past workers in those states.

**Mark Behrens:** There is almost no company in America that is more than 25 years old that is not involved in asbestos-related litigation, in one way or another. If you have a premise, for instance, that is more than 25 years old, you'd probably have asbestos. There are now around 8500 companies that are involved in the asbestos-related litigation. I can almost guarantee that there are probably dozens of ND companies involved in the litigation generally.

**Rep. Zaiser:** You don't know of any though; why do we need this legislation if we're not aware of any asbestos-related companies that are in ND.

**Mark Behrens:** The retirees would be affected if this company goes under. I'm guessing that those people probably live in Fargo or Grand Forks, if they come from the clients in MN. If this company goes under, and they are in very serious financial difficulty, the pensions will be

wiped out, their health care benefits will be wiped out, etc. We try to do the best we can to help the companies, to provide fairness to the companies that really deserves it.

**Rep. Wolf:** When you're saying that Crown Cork paid \$600 million dollars, did they actually pay that money, or did their insurance company pay that money.

**Mark Behrens:** I believe that is their money. I think their company stopped its insurance coverage to this company over a decade ago. Everything being paid today, I believe is their money. If they had to refinance their debt today, they would be either unable to do it or it would not be competitive. If the company goes bankrupt, they would probably be bought by their competitors, a foreign company. Because of the way tax deductions are accelerated with an acquisition, many of the people might lose their pensions.

**Rep. Wolf:** Could you provide us with a breakdown of how much of the \$600 million was paid out of Crown's profits and how much of it came from their insurance company.

**Mark Behrens:** I can try to find that information. My understanding is that they settled their coverage issue.

**Rep. Wolf:** I would like some numbers. Do the Crown people who live in the state of ND, I don't want to know their names but I would like to know where they reside in our state, specifically. You mentioned that the stock prices have fallen. I would like specifics from you when they were at \$86 and when they plummeted to the 86 cents. If it fell last year, so did everybody else's. I need specifics on the history of the stock prices.

**Mark Behrens:** The company didn't start potential litigation until the 1990's when 85% of other companies were forced into bankruptcy because of the litigation. Then they looked around to see who else had money and then that's when the 8500 lawsuits came about during the 2002-2004 time period. The company was spending about \$120 million dollars a year on the costs, they would not be around today if this legislation had not passed in their state.

**Rep. Wolf:** You talked about 8500 companies, of those 8500 companies, I would like to know which ones are in North Dakota.

**Mark Behrens:** That I don't have. The 8500 lawsuit information comes from the Rand Institute for Civil Justice, which is a mainstream Think Tank.

**Rep. Delmore:** This law has passed in several states, as I understand it; have there been any challenges in courts.

**Mark Behrens:** There have been, not with the section of legislation generally, but with respect to the fact of retroactivity. That has been the only issue that has been contentious in other states. The issue being, that we've had the law applied to cases that they filed after the effective date, or by a pending date. I'm not certain here that it makes much difference, because I don't think Crown has any litigation; but that issue of retroactivity has been litigated in other states. It was the PA Supreme Court ruled under their constitution that the law did not apply to retroactivity. In TX, there are two appellate court decisions and I think they got voted down in each one. That certainly would be something for the committee to consider. That would be important to get your support on. That could have reform too.

**Rep. Delmore:** I think that this committee needs to be aware that if something is unconstitutional, we don't want to pass bills that don't meet that.

**Mark Behrens:** It really depends on how the state looked at, it gets a little complicated, and it depends on how somebody has a vested right. Some states say you don't have a vested right until you get a judgment. Some states say the right vests when you have an injury and a right to bring suit. That, frankly, is the only issue that has been contentious; I think it's in the last line of the bill about whether it should apply to cases filed after an effective date or those are currently pending, and we have a safety valve in there that says, depending on how the court

interprets it to say that can't file it retroactively, then it says the bill would apply only going forward. We basically said that however the court decides that issue, we will abide by that law.

**Rep. Dahl:** You said the company had financial difficulty. Would you say that the asbestos litigation is the primary or sole reason for that difficulty, or are there other things that are going on.

**Mark Behrens:** It is the sole reason; if a company bankrupts, it will be because of this litigation. There are a lot of companies that have very serious financial problems right now. The proof of that would be to look at before the performance; how the market has corrected; when they had unlimited potential liability they were basically saying "you can jump on and jump fast". When we obtained reform in TX and MS, we saw it climb back up. This is a company that makes, fundamentally, a good product, but they've been pulled into this litigation that they have been unable to get themselves out of it, for something they never did. It certainly does cost.

**Rep. Dahl:** On page 4 of the bill, under scope of chapter, it requires a liberal construction by courts. I was curious about the language. I think we generally apply that to consumer or remedial legislation, which this is not. We typically apply that to those in an inferior position, so I'm not convinced as to why that should be applied here.

**Mark Behrens:** I guess the answer is that was in the bill, probably not necessary here, but I think it was included in the law that was adopted in TX and MS, where there was more concern that the judges would just ignore what the legislative intent was. This was a concern about how the judges may interpret this and try to go around what the legislature's intent was. But if that's not the thing that is needed in this legislation here, we can certainly look at that.

**Rep. Griffin:** You talked about the retirees in North Dakota, if something did happen to Crown Corp. and they went bankrupt, wouldn't their pension probably be taken over by the federal government and still be in place.

**Mark Behrens:** It depends. From what I understand of the Federal Pension Guarantee, it guarantees pensions up to \$40,000 a year. So if you were a worker and you're pension would be less than that, you would get paid. If you were making \$48,000/yr. you'd only get \$40,000, etc. The taxpayers end up paying for that federal fund.

**Rep. Griffin:** How will this bill benefit the constituents.

**Mark Behrens:** It would be a direct benefit for the retirees. It might also affect other people indirectly. This may affect other pensions, such as the school teachers, their pension fund, if you have a mutual fund. These funds are the types that can have investors and they not even know that they are a part of this matter.

**Rep. Griffin:** You made a statement saying that a company that made or sold asbestos should be ones that are liable. How many of those companies are still in business, without being bought out or merged with another company.

**Mark Behrens:** There are some, I don't have the numbers. Many companies have gone on to merged or acquired by other companies. The Rand Think Tank's report, said that 85% of the industries, industrial sectors of America have been touched by this litigation, so in terms of who is still around, you're literally looking at 8500 defendants that are still solvent companies. Every time a company goes insolvent, their liability gets pushed over to the next company. There is a snowball effect with these things.

**Rep. Zaiser:** Let's get back to liberal construction. In the states that have liberal construction as we interpret, we don't even have liberal construction for injured workers and their concerns against the state, which I think should be the case. Wouldn't it seem rather difficult here to

support liberal construction for a corporation rather than for the injured workers, in the workers comp claims.

**Mark Behrens:** We would be open to look at that if you wanted to put something in the Century Code. I guess the only parallel that I can draw between the two is that the injured worker is generally somebody who is hurt through no fault of their own. They are given the benefit of the doubt, because they didn't do something wrong and they are harmed by it. Here too, the other company has paid out \$600 million dollars for a product it never made. It also never did anything wrong. This is looking at an individual vs. the company, but the parallels are the same. In both cases, you have two parties who were injured through no fault of their own.

**Rep. Zaiser:** We don't grant liberal construction here in ND or even refer to it.

**Mark Behrens:** That would be something that the committee could take a look at.

**Rep. Koppelman:** You talked about how specific this is. Rep. Klemin talked about how there are other ND businesses that may be affected by this legislation or at least this issue. I'm curious, in your experience, in looking at this in other states, whether there has been venue shopping, where people look at the state and think their legal climate is popular for bringing actions. Is that a concern at all.

**Mark Behrens:** It is. We've seen two types of reform shopping; 1) is a company trying to decide where to expand or relocate their business. We've seen this happen in MS and TX, who were the first two states to do this. The governor from Texas went to a conference in Sweden and when I met with him, he told me that in the past 10 years, 0 jobs have been created. Texas has created 250,000 jobs, why, because he's made it clear and President Bush, when he was governor, made it very clear that they are going to work on this to make their state an attractive job growth state. They've been very successful in that regard.



Absolutely, this is something that companies are looking at where to go to create jobs. They look at the law and the environment of the state. Texas is probably the best example of a state that works because of lots of reforms like this. On the plaintiff side, yes, they also look to go reform shopping if the states are favorable. Because of the different reforms that have occurred in Texas, both by the legislature and their Supreme Court, their Supreme Court actually much harder. Texas is now drying up as a state for asbestos litigation. When a plaintiff comes there, they are opening offices in LA and in San Francisco. There is a saying that there is a new gold rush going on in California and it's not for gold.

**Rep. Kretschmar:** Are you aware of any case where the defendant was found far enough away from asbestos so that the court ruled it wouldn't be liable.

**Mark Behrens:** In individual cases, there are cases where people who installed automotive brake pads; there have been lawsuits against the auto companies, where somebody changed the brakes at home and then sued the automaker. In those cases, the court passed down that because the plaintiff's exposure was insufficient, it found the defendant not liable. So there are individual cases where they've proven that the defendant didn't make the product or the exposure was so little that it couldn't have caused the harm and the company has gotten off. The way successor liability works, there is nothing that I'm aware of that prevents the company from being sued and potentially becoming liable, no matter how far the company is removed from the previous company that made the product.

**Chairman DeKrey:** Thank you. Further testimony in support. Testimony in opposition.

**David Thompson, Attorney, Grand Forks:** Opposed (attachments 1,2,3,4,5, etc.). I have been working on these asbestos cases where people have been injured or killed by asbestos caused diseases for the past 25 years. I've also represented surviving family members in ND who have been injured or killed by asbestos causing diseases. Rep. Klemin has represented

the asbestos product manufacturers, including General Electric, as defendants for 20 years. I have one of my clients here today, Ms. Dorothy Hoffman, who lives in Mandan. Her husband, Tim, died 10/19/08 because he had been exposed to asbestos disease many years ago. Many asbestos-causing diseases do not manifest themselves for many years, after the time of the injurious exposure. They don't become diagnosable for many years, time is usually around 36.7 years after the first exposure. I had dealt personally with Tim, and by phone with Dorothy. The tragedy of asbestos disease, there aren't 8500 defendants, by the way, there is no premises liability in ND and there never has been. We have good courts and good judges who exercise common sense and this is not an easy place to represent victims of asbestos diseases. On August 1, 1987, this legislative assembly enacted a bill that created several liability. They said in 1987, that they were going to abolish joint and several liability and that means that if a defendant is held to be 10% responsible, they pay 10%. They don't pay for somebody else's liability. So for that reason in ND, you have to name in good faith, every particular defendant that you believe in going into the case, you have to establish was responsible for the exposure that caused the disease or death. That is absolutely true. The average latency period from the first exposure to the time the disease is diagnosed after this is 36.7 years. The victim has a time bomb inside their body. This legislature said one particular defendant is not going to pay for somebody else's liability and then go after them for contribution, its several liability. We're one of the few states that have a pure several liability. So you need to enjoin these companies in the case. You get a list from discovery shows that they weren't responsible. I don't believe that our entire presentation is pending against Crown. I say that because we have a very good relationship with Crown's regional counsel in Minneapolis, when we start out a case; either Bob Bennett calls me or I call him and we talk about it. We're not talking about king's ransoms here. Crown is in a unique position, not

because it wasn't responsible, not because it's not innocent, but because the company that it merged with, it merged consciously knowing and now wants to be bailed out now from that decision after the fact. Manufacturers start up these products, up until the year 1960 -1963 or so. We, at times, know where that product was, because there was a distributor that sold that product. There is a lot of asbestos at the Minot Air Force Base, in schools throughout the state. We have letterhead from the Fargo distributor with the Munday Corp. Munday Corp. is the company that was merged with Crown Cork and Seal in 1966, after Crown had made two different stock purchases, the first in late 1963 and the second in 1964. I have a document proving that. So we talk about the latency period of mesothelioma, we talked about Crown. There are different versions of this bill in the other states. It was defeated in MD and DE. The people in Delaware felt that this was going to create confusion in corporation law, it was a piece of special legislation, which was for one particular company to avoid responsibility after it had merged with another one. The corporation law of this country, and it is true in ND, as well as in any other state, its uniform. If one corporation merges with another, it takes all of its liability. There are ways around that. The company can purchase assets, known as a mere asset purchase, where the company does not want to incur or take on all that other company's liability, they simply make a conscious decision to purchase the particular parts of the company. The acquiring company, under those circumstances does not, apply here to the liability of the company from which it purchased those assets. Those options were available to Crown in 1963 and 1964 for the stock purchases, and the merger in 1966. That was an option, not taken for whatever reason by Crown Cork. We have this bill, HB 1430, has taken the two parts of the chapter right now which are very important, when looking at this bill. The first is "innocent purchaser" in the first section of the bill. There is no definition of what "innocent successor" is. There are no North Dakota companies that would benefit from this legislation.

Theoretically this doesn't create an incentive for someone to try, but there is no ND corporation that would benefit from this. The second part of this bill is to take January 1, 1972. Mr. Behrens, in his testimony this morning, supports the bill and talking about fairness and places where this bill has been enacted. Fairness in Texas is June 1968. Here fairness is January 1, 1972. To know why that date was selected, you can look at the materials distributed, part of my trial brief: "while come claim Crown should have exercised greater due diligence before it became involved with Mundet, it was not until 1972 that OSHA established its first regulations covering asbestos, a material that up to that time was widely used as the world's best insulation material. In addition, it was not until the mid-1970's that personal injury lawsuits began to be filed in connection with asbestos." This document was distributed by Crown in Indiana, it should be SB 469 in Indiana. In there, it does have the January 1, 1972 date. So if you look at that paragraph, that's the only paragraph where there's any kind of explanation as to what this apparently, Crown says it's innocent because clearly we should have known before January 1, 1972. The Occupational Safety and Health Act, it should be noted, was not enacted until 1970 and asbestos was one of the reasons the agency was created in April 1971. Asbestos was one of the very first things that was raised. Beyond that, a suggestion that Mundet is innocent because it had no reason to know about asbestos liability before the first transaction in 1963, 1964 and 1966 is false. The case of John D. Swartout vs. Mundet Corp., was settled on June 22, 1956. The Swartout case ended in a death award as a result of this asbestos disease. Mundet had this case pending in 1955. The case of Robert Jones was settled in 1964; the case of Mary Dean vs. Mundet Corp, 1959; case of Weiss vs. Mundet Corp. and others. This is just an exemplar presentation of existing asbestos disease claims that were pending against Mundet Corp in the 1950's and 1960's, known prior to the time that this corporate transaction occurred. So whatever January 1, 1972, means, it doesn't

mean that Crown Cork & Seal is innocent prior to that date. If this bill is passed, the Crown Cork & Seal has never been licensed to do business in ND, it is not licensed to do business in ND today. Crown Cork & Seal withdrew its authority to do business in ND in 1997, and it has filed a withdrawal with the Secretary of State's office, it says among other things that its certificate in the presentation that it is no longer doing business in ND, has no intention of doing any business in ND and withdraws any authority and rescinds any authority to do business in the state completely. So Crown, Cork & Seal hasn't been licensed to do business in ND since 1997. Crown Holdings were licensed to do business in ND. Crown does not employ anyone here, but that there are 12 pensioners in the state. The bottom line is this bill doesn't really have a lot to do with ND at all, in fact, I submit it has nothing to do with anything in North Dakota. When I look at this bill, I ask myself, why are we seeing it. Rep. Klemin is on the bill, General Electric purchased wire companies back in the 1960's. We haven't heard that there is a potential benefit. So the people that requested this bill, on the bill's surface, the week of January 12-16, 2009 Cory Schaecher, from the law firm of Shook, Hardy & Bacon, PLLP based in Kansas City, from a huge lobbying operation in Washington, DC distributed his business card to legislators in the back hallways of this building. He's not registered as a lobbyist. He registered as a lobbyist on Friday after some of us were discussing this bill openly, that we were concerned that there was a violation of law here. Not registering as a lobbyist is a serious matter in our jurisprudence. NDCC Chapter 54-05.1-01 said the intent here is back in 1975, to require lobbyists to register as such before making any lobbying activity and to require certain reporting procedures. (See informational brief, exhibit 2). In the NDCC 54-05.1-02 defines that any person who in any manner, whatsoever, directly or indirectly performs any of the following activities: a) attempts to secure the passage,

amendment or defeat of any legislation by the legislative assembly, with approval or veto over any legislation by the governor of the state...

**Chairman DeKrey:** Excuse me, sir, we need to get back on track here, we're running late and we need to talk about this bill specifically. We get it, you don't like their law firm. We need to get back to the facts.

**David Thompson:** I am specifically stating that Mr. Schaecher, in my legal opinion, committed a criminal offense.

**Ch. DeKrey:** Okay, but this isn't a court, this is a committee hearing, and we're hearing this bill.

**David Thompson:** We have a copy of Mr. Schaecher's business card and it should be noted that NDCC 54-05.1-06 makes those activities unregistered an infraction. Mr. Oehlke, of the ND Chamber of Commerce, going through the halls of this legislature, we believe that was assistance provided under NDCC 12.1-03-01 and that makes him also responsible for having committed a criminal offense.

**Ch. DeKrey:** If you feel a crime has been committed, please report it to the proper authorities.

**David Thompson:** I am.

**Chairman DeKrey:** We just want to hear this bill.

**David Thompson :** I have discussed the matter with the AG's office and hope that action will be taken. Further, he promoted this bill without identifying specifically who he had been representing. There was a final section which says that NDCC 54-05.1-06, if you attempt to influence any member of the legislative assembly without first making known to such members the real true interest that the person has in this measure, either personally or as an attorney, that is a class A misdemeanor. We're going to be sending letters regarding this to Schaecher and his conduct, Mr. Oehlke and his conduct in connection with promoting this bill, and I don't

know if Rep. Klemin or others were involved and knowingly promoted this bill in this manner with an unregistered lobbyist. I will be informing the Secretary of State of all facts that we have in our possession. We are also going to be copying the AG, and the Burleigh County State's attorney with this information. Now we heard about Crown, Cork & Seal, and why it's supposed to be in sad shape. We discuss this in our written material that at the time, they had junk bond status in 1999, they made a number of purchases and acquisitions, they informed the SEC in 2007 that they were operating 141 plants in 41 countries, most of their revenue coming from other countries, net sales of \$7.7 billion in 2007; not the figures given to you by Mr. Behrens. This bill has failed in other jurisdictions. This company is in the shape it is because it overextended itself. Not because of asbestos litigation and certainly not because of asbestos litigation in ND, none of which it is now. While you consider whether there are 12 pensioners, who might have pensions over \$40,000 that might be impacted somehow. This is a fact situation, there is a teacher, who worked at a school in which Mundet Corp. asbestos products were installed and there are a number of them in ND; or perhaps someone who worked at the Minot Air Force Base, where there are a lot of Mundet Corp. product that was put in 1959. The average latency term for mesothelioma is 36.7 years. That's just the average. If that exposure occurred 9 years later, and many of the materials were still in place, there were some abatement efforts, there are places in which a single exposure has shown to cause mesothelioma. Now, if this person exposed Mundet Corp. asbestos, they get mesothelioma 36.7 years later, and you would have enacted this bill, people like Dorothy Hoffman have no rights; all because you wanted to give a PA company that comes in here with legislation pushed by Shook, Hardy & Bacon, with 61,000 tobacco litigation cases are ongoing, this kind of carpetbagger activity is bad for the state. You do not want to promote a favorable business climate by administrating and disadvantaging your own citizens and taking their rights

away. This is a bad bill, a bill that's going to go down in DE and other states. I submit and request that you take a look at the materials that I filed today. I believe that this bill should be withdrawn, and if for some reason it is not withdrawn, I ask every member of this committee to vote Do Not Pass.

**Rep. Zaiser:** You mentioned that Delaware as one of the states where this bill has been rejected.

**David Thompson:** I didn't say Delaware because it has in other states. We haven't had a lot of time to get around this. This bill started on the 15<sup>th</sup> after Mr. Schaecher and Mr. Oehlke circulated it through the back rooms of this building, and that's how it was introduced by Mr. Schaecher, they slipped it through on the 15<sup>th</sup>. It was very expeditious and so we are currently looking into that. We understand that there are other sections that Mr. Schaecher was trying to get in, in addition.

**Chairman DeKrey:** Thank you. Further testimony in opposition.

**Renee Pfennig, ND Building & Construction Trades Council and the ND Electrical**

**Workers Council:** We are opposed to this bill. We have had members that have passed away from asbestos-related diseases. We ask for a Do Not Pass recommendation.

**Chairman DeKrey:** Just what we like, short and succinct. Thank you. Further testimony in opposition. We will close the hearing.



## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1430

House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 2/4/09

Recorder Job Number: 8678, 8691

Committee Clerk Signature



Minutes:

**Ch. DeKrey:** We will take a look at HB 1430.

**Rep. Klemin:** The amendment on page 4 it takes out lines 24 and 25, about the liberal construction.

**Rep. Griffin:** Second.

**Chairman DeKrey:** Any further discussion on the amendment. Voice vote. Motion carried. We now have the bill before us as amended. What are the committee's wishes.

**Rep. Klemin:** I move a Do Pass as amended.

**Rep. Kingsbury:** Second.

**Rep. Klemin:** I handed out a sheet with the names of ND companies on it, who are affected by this bill. It was stated that only one company, Crown, Cork & Seal was affected by this, that's actually not the case. As I mentioned to the committee when this bill was first discussed, there are a number of ND companies that are also affected by it. This would apply to them as well, in the event that this would have a number of possible effects. For example, Hedahl's, which is headquartered here in Bismarck, has quite a few different outlets in ND and some other states, but they are a ND company, and if they wanted to sell that business, this would certainly have an effect on the purchase price. Hedahl's has been involved in 80-100 lawsuits

over this because they handled some products in the past that have contained asbestos as a retailer. They show up in virtually all of the asbestos lawsuits involving friction-type products. All of these other companies have similar situations from different aspects, like insulation, etc. and so the whole scope of this bill would apply not only to a company like Crown, Cork & Seal, but also to these specific ND companies. They also have employees that could be potentially affected. If one of these companies wanted to sell their business to somebody else, this bill would be a method by which the potential future liability of Hedahl's or somebody could be determined so that their liability would be limited to the price that was paid to buy Hedahl's, adjusted for inflation in the future, depending on when that sale actually occurred, so that a company buying it wouldn't be liable for more than they paid for the company to start with plus inflation adjustment. These companies all have employees, some are retirees, the whole point of this is to show that we do have a number of ND companies and these are just ones that I know of. There might be others too.

**Rep. Griffin:** My question regarding this would be to define "innocent successor" in the bill as a company that was before 1972. So I don't see companies that were bought now, this bill would have no impact, the way I interpret it.

**Rep. Klemin:** You know, I think you may be right. We may have to amend this further.

**Rep. Koppelman:** I move that we strike the language beginning at the end of line 21 "and became a" through "successor before January 1, 1972" on line 22.

**Rep. Klemin:** Second.

**Rep. Dahl:** That really changes the intent of this bill. When we heard this bill it was for one particular company, and to totally limit this prospectively and after 1972 blows the whole thing wide open and that's not what we had a hearing on. I imagine there would be interested parties that would have much more to comment.

**Rep. Koppelman:** What I heard during the hearing, was mostly discussion on one company as the example, and even if the bill was crafted for that one company, I heard testimony from Rep. Klemin talking about cases he's been involved with in ND, I heard testimony opposing the bill about cases in ND, none of which I related to that particular company. I think what we heard testimony on was the question of whether a company buying another company should be liable for the activity of that company, above and beyond the cost that it paid for that company.

**Rep. Dahl:** The whole point of this 1972 date, is because that's when OSHA came out with their regulations regarding asbestos. That was the whole point. The argument was, we held this company for 90 days and nobody really needed to know that asbestos was extremely dangerous and very hazardous to your health. So that's why this date was chosen. So if we totally take that off, that sort of negates part of the rationale for a good chunk of this bill.

**Rep. Koppelman:** That may be, I don't know the OSHA dates, and I just remember testimony about things happening in the 1960's. I don't know what the magic of the 1972 date is.

**Rep. Dahl:** It's when everyone was put on notice that this was dangerous.

**Rep. Klemin:** It may be that, OSHA wasn't even created until after the 1970's, asbestos containing products were sold well beyond that into the 1980's and 1990's.

**Rep. Dahl:** I just remember speaking with the ALEC people, and that was their rationale to take a date in 1972, I thought it was OSHA but maybe it was a different body, but came out with basically a statement putting people on notice that this was extremely hazardous and dangerous and everyone was on notice from there on forward that you're dealing with a very hazardous materials.

**Rep. Klemin:** It may be true that OSHA came out with some regulations on that date, but if that was the case, a lot of these lawsuits relate to activities that took place well before 1972, way back into the '50s and '60s and even the '40s.

**Rep. Dahl:** And by keeping that 1972 language is in there that wouldn't affect...

**Rep. Klemin:** No it doesn't, because they are all in these lawsuits. Every one of these cases I've seen, people talk about how they were involved in construction of the Garrison Dam, for instance. That's one of the projects that comes up, that was back in the early '50s. So I think that by taking that out it takes out a question that has been raised, and it wouldn't include any of these other companies.

**Chairman DeKrey:** Voice vote on the amendment. Voice vote, motion carried. We now have the bill before us as amended.

**Rep. Klemin:** I move a Do Pass as amended.

**Rep. Kingsbury:** Seconded.

**Chairman DeKrey:** Further discussion.

**Rep. Wolf:** I asked the testifier from ALEC to provide me with additional information about the specific people living in ND, has anybody gotten information.

**Chairman DeKrey:** No. Further discussion.

**Rep. Griffin:** I would hope that we would oppose the bill. I do think that by releasing the liability of the companies, we are hurting the plaintiffs in the state that have potential claims, as was brought up in the testimony, some of these claims take 36.7 years. If you look at page 3, it talks about the fair market value on that page. It doesn't talk about inflation or an inflationary clause in there.

**Rep. Klemin:** There is. Page 4.

**Rep. Wolf:** I think we should defeat this bill.

**Rep. Dahl:** I was going to vote yes on this bill, because it was my understanding that people from ALEC, what they wanted was to show progress in the states, so they could go and refinance their debt on Wall Street. I don't think that they ever intended for this to have a real effect on ND's asbestos problems. I think what we just did with this amendment has really far reaching implications and I'm going to vote no.

**Chairman DeKrey:** Clerk will call the roll on HB 1430.

**6 YES 7 NO 0 ABSENT DO PASS MOTION FAILED**

**Chairman DeKrey:** We need another motion.

**Rep. Zaiser:** I move a Do Not Pass as amended.

**Rep. Wolf:** Seconded.

**7 YES 6 NO 0 ABSENT DO NOT PASS AS AMENDED CARRIER: Rep. Griffin**

**(FURTHER ACTION WAS TAKEN)**

**Rep. Dahl:** I contacted Mark Behrens, the attorney for ALEC, it was never their intention or their wish to have the 1972 date taken out, and they don't want it out. The purpose of this bill is to protect the innocent successor. After this 1972 date, we would then be protecting corporations who are not innocent, so that doesn't make a lot of sense. It's a function of the law, I move that we reconsider our action.

**Rep. Koppelman:** Second.

**Chairman DeKrey:** Further discussion.

**Rep. Koppelman:** It's your intention then to get the bill back before us to remove that amendment and with that go back to the original wording.

**Rep. Dahl:** Yes, we're talking about just the 1972 amendment.

**Chairman DeKrey:** Further discussion. Voice vote, chair is in doubt. Clerk will call the roll.

**8 YES 5 NO 0 ABSENT MOTION TO RECONSIDER ACTION IS PASSED**

**Chairman DeKrey:** We now have the bill before us. What are the committee's wishes.

**Rep. Dahl:** I make a motion that we reconsider our amendment to strike the language on lines 21 and 22 and leave the language on line 21 and 22 in the bill.

**Rep. Kingsbury:** Second.

**Chairman DeKrey:** Voice vote, motion passes. We now have the bill before as amended.  
What are the committee's wishes.

**Rep. Koppelman:** If we were to pass this bill now, with that language back in, you talked about innocent successor companies. What you're saying that on or about that date is when people understood that asbestos was bad stuff, and as it relates to this bill, what it would do if someone decided in 1975, to sell their company to someone else because of litigation problems, both the buyer and the seller at that point should have been aware and therefore, they are off the hook. If it were before that, when we didn't know this was so dangerous, then this would apply.

**Rep. Dahl:** Yes, although I'm not sure that a company could get off the hook.

**Rep. Klemin:** What most likely would happen is that it would be strictly an asset purchase, not a purchase of the whole company, they wouldn't purchase the liabilities.

**Rep. Dahl:** I move a Do Pass as amended.

**Rep. Koppelman:** Seconded.

**7 YES 6 NO 0 ABSENT**

**DO PASS AS AMENDED**

**CARRIER: Rep. Klemin**

VK  
2/4/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1430

Page 4, remove lines 24 and 25

Page 4, line 26, remove "2."

Renumber accordingly

Date: 2/4/09  
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1430

**HOUSE JUDICIARY COMMITTEE**

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken ☐ DP ☐ DNP ☒ DP AS AMEND ☐ DNP AS AMEND

Motion Made By Rep. Klemm Seconded By Rep. Kingsbury

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore		✓
Rep. Klemm	✓		Rep. Griffin		✓
Rep. Boehning	✓		Rep. Vig		✓
Rep. Dahl		✓	Rep. Wolf		✓
Rep. Hatlestad	✓		Rep. Zaiser		✓
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar		✓			

Total (Yes) 6 No 7

Absent \_\_\_\_\_

Floor Carrier: \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

*Motion Failed*



Date: 2/4/09  
Roll Call Vote #: 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1430

**HOUSE JUDICIARY COMMITTEE**

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken ☐ DP ☐ DNP ☐ DP AS AMEND ☒ DNP AS AMEND

Motion Made By Rep. Zaiser Seconded By Rep. Wolf

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey		✓	Rep. Delmore	✓	
Rep. Klemin		✓	Rep. Griffin	✓	
Rep. Boehning		✓	Rep. Vig	✓	
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Hatlestad		✓	Rep. Zaiser	✓	
Rep. Kingsbury		✓			
Rep. Koppelman		✓			
Rep. Kretschmar	✓				

Total (Yes) 7 No 6

Absent 1

Floor Carrier: Rep. Griffin

If the vote is on an amendment, briefly indicate intent:

Date: 2/4/09  
Roll Call Vote #: 3

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1430

**HOUSE JUDICIARY COMMITTEE**

☐ Check here for Conference Committee

Legislative Council Amendment Number Motion to Reconsider Action

Action Taken ☐ DP ☐ DNP ☐ DP AS AMEND ☐ DNP AS AMEND

Motion Made By \_\_\_\_\_ Seconded By \_\_\_\_\_

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore		✓
Rep. Klemin	✓		Rep. Griffin		✓
Rep. Boehning	✓		Rep. Vig		✓
Rep. Dahl	✓		Rep. Wolf		✓
Rep. Hatlestad	✓		Rep. Zaiser		✓
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 8 No 5

Absent —

Floor Carrier: Pass motion

If the vote is on an amendment, briefly indicate intent:

Date: 2/4/09  
Roll Call Vote #: 4

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1430

**HOUSE JUDICIARY COMMITTEE**

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken ☐ DP ☐ DNP ☒ DP AS AMEND ☐ DNP AS AMEND

Motion Made By Rep. Dahle Seconded By Rep. Koppelman

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey			Rep. Delmore		
Rep. Klemin			Rep. Griffin		
Rep. Boehning			Rep. Vig		
Rep. Dahl			Rep. Wolf		
Rep. Hatlestad			Rep. Zaiser		
Rep. Kingsbury					
Rep. Koppelman					
Rep. Kretschmar					

Total (Yes) 7 No 6

Absent 0

Floor Carrier: Rep. Klemin

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1430: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 6 NAYS, 0 ABSENT AND NOT VOTING). HB 1430 was placed on the Sixth order on the calendar.

Page 4, remove lines 24 and 25

Page 4, line 26, remove "2."

Renumber accordingly

2009 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1430

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1430

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: March 4, 2009

Recorder Job Number: 10201

Committee Clerk Signature

*Eva Liebelt*

Minutes:

Joint Hearing: IBL with Judiciary on House Bill 1430.

Chairman Klein: Opened the hearing.

Jeb Oehlke, North Dakota Chamber of Commerce: This bill is to address the fairness in the legal system. Crown Cork & Seal are being held liable for the predecessor's product. This bill intends to fix that. A company that produced or installed asbestos is liable up to the fair market value of the corporation that caused the harm. The protection offered here is to an innocent corporation that has been brought into litigation.

Discussion and comments made on the benefit of this bill to North Dakota businesses and the people of North Dakota.

Mark Behrens, Advisor to ALEC: Registered lobbyist for Crown Cork & Seal: Written testimony in favor of the bill.

Senator Potter: You reference the Washington statute as being similar how is it different?

Mark: It is not identical that is being pushed by the plaintiffs bar in Washington State.

Continued testimony on examples of companies that have unfairly sued.

Senator Potter: I understand the fine line you are walking. We write legislation that is carefully crafted. How does ALEC feel about special crafting of legislation?

Mark: They don't feel it's special. At this point forward if a company decided to merge after 1972. ALEC doesn't do special legislation it does targeted legislation.

Michael Rowley, Counsel for Crown Cork and Seal: Mark did a great job. Crown is a can and bottle cap company. Never made or sold asbestos. Being sold purely on the basis of a successor. I started for crown in 1996 and we didn't have a lot of litigations. But as other companies started going out of business we started having more suits. We have about 3.4 billion dollars in debt. Continues discussing what has happened to the company as result of the law suits. They discussed about it not impacting clients within the state. This will not affect their ability to collect.

Discussion continued and questions asked about Mundet.

Senator Schneider: If you could just tell me the straight up sequence of events here. So

Mundet was sold off to Baldwin, is that right?

Mike: It's Baldwin- Eric- Hill, in February 1964.

Senator Schneider: I assume there was some sort of contract for that sale correct?

Mike: Yes.

Senator Schneider: And in that contract Mundet agreed not to enter the insulation business again.

Mike: That's correct all the assets related to the insulation business were sold with a non-compete agreement and the right to use the name Mundet.

Senator Schneider: So there was a contract developed at arm's length between Mundet and Baldwin?

Mike: Mundet and Baldwin- Eric- Hill.

Senator Schneider: And I would assume because we are here today that Mundet agreed to maintain the pre 1964 liabilities?

Mike: No there was no agreement one way or the other.

Senator Schneider: That wasn't a very good decision.

Mike: At that time I don't think anyone realized there were asbestos liabilities.

Senator Schneider: But that's the purpose of having general liability insurance is it not as a guard against of unknown risk.

Mike: When you have six hundred million dollars worth of claims there's not too many insurance policies that would cover.

Senator Schneider: You had insurance to begin with and either you or the insurer new about these outstanding claims, you would be covered?

Mike: Crown and Mundet had insurance which has long been exhausted.

Senator Wanzek: I see the issue we are addressing whether they are rightful claims but the fairness of who pays the claim.

Mike: We've paid our fair share.

Senator Horne: Why don't you just go to Congress and take care of it nationally?

Mike: That's a big thing to do.

Senator Fiebiger: How has Crown done the last couple of years?

Mike: We've begun to make money again. Last year we made two hundred and eighty million.

Senator Nelson: Mr. Raleigh if it's too hard to go to the Federal Government why, are you coming to North Dakota? We are not an industrial state.

Mike: It is a different rationale we are trying to let Wall Street see we can survive.

Discussion and questions of Mike Raleigh continued.

Allen Austad, ND Association for Justice: Testified against the bill. Talked about the fact that asbestos was known to cause cancer in 1940. Stated that they could not have been an innocent successor and that they had to know.



Senator Nething: Talked about the fairness issue. Mundet had shut down the operation of producing asbestos and how can you make Crown responsible for something they did not produce.

Discussion continued about if Crown is responsible and how this would keep claims from going forward in the courts.

David Thompson, Lawyer, P.C., Written testimony in opposition of the bill.

Dave Kemnitz, President of AFL-CIO: Written testimony. In opposition of the bill.

Discussion and questions continued and Mark from ALEC spoke again. Both sides debated back and forth with each other. Senators asked questions of both sides.

Steve Allard, International Association of Machinist and Aerospace Workers: Written Testimony in opposition to the bill.

Renee Pfenning, North Dakota Building and Construction Trades Council: Written testimony in opposition of the bill and attachment.

Bruce Bergstrom: Testified in opposition. He was an asbestos worker and has watched many of his friends pass away from being exposed to the asbestos. He also has the disease.

John Risch, United Transportation Union: Representing railroad workers across the state.

Asbestosis is common with railroad workers. Testifies against the bill. He believes it's a tangled web that will lead to more companies not having to be responsible.

Warren Larson, ND Counsel of Education Leaders: He spoke against the bill and says passing the bill shifts the burden back to those who became in from the asbestos. The latency period is fifteen to twenty years from exposure. In reality it would not allow the potential victims from receiving compensation. He also felt the school districts would end up being the ones that are sued.

Discussion followed on who should be responsible and if Crown has paid enough. Are they going after Crown just because they have money?

Chairman Klein: Closed the hearing.

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1430

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: March 10, 2009

Recorder Job Number: 10634

Committee Clerk Signature

*Eia Lubelt*

Minutes:

Chairman Klein: 1430 is the bill we heard last week dealing with the asbestos liability.

Senator Andrist: Moved a do pass.

Senator Wanzek: Seconded.

Discussion followed.

Senator Potter: I think the key factor is this. The sponsors were told that Crown Corp were innocent successors. I believe it was brought out that this is not so. He did not say they did not continue to market it but they did sell it for three months. When they purchased the corporation they decide to purchase all the liability but did not sell it with the liabilities. Not only did they sell products made by Mundet in North Dakota but to St. Alexis and the Civic Center. I urge you to look out for North Dakota.

Chairman Klein: They have paid out six hundred and eighty million dollars. It's not that they haven't done their share.

Senator Andrist: I heard the only matter of the dispute was whether they sold inventory. I've talked to two people. One said you can't prove that it was sold in North Dakota. Another was fairly certain they type of product wasn't responsible for their condition.

Senator Wanzek: I don't think anyone disagrees that people have a right to compensation. But they only owned it for three months in 1963. At some point in time it has to end as a matter of principle.

Senator Potter: I've noticed that fairness is used a lot at the point of view of the speaker. Fairness is for the people of North Dakota. We're helping them move along to having protection. There selling it in North Dakota because they think we will protect them.

Senator Nodland: I agree with Senator Wanzek and Senator Andrist. We shouldn't take it out on a company that is out of state. To me it's a deep pocket scheme.

Senator Andrist: I don't see this bill inhibiting a claimant from pursuing a claim from anyone who sold asbestos.

Senator Horne: Seems to me they are shopping around. If this is such a strong case whe not get release from the congress. I am going to oppose.

Row Call Vote: 4-3.

Senator Andrist: To Carry.

++

Date: 3/10/09Roll Call Vote #: 1

**2009 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 1430**

Senate

Committee

**Industry, Business and Labor**

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken

☒ **Pass**☐ **Do Not Pass**☐ **Amended**Motion Made By Senator Andrist Seconded By Senator Wanzek

Senator	Yes	No	Senator	Yes	No
Senator Jerry Klein - Chairman	✓		Senator Arthur H. Behm		✓
Senator Terry Wanzek - V.Chair	✓		Senator Robert M. Horne		✓
Senator John M. Andrist	✓		Senator Tracy Potter		✓
Senator George Nodland	✓				

Total (Yes) 4 No 3Absent 0Floor Assignment Senator Andrist

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE (410)**  
March 11, 2009 8:25 a.m.


**Module No: SR-44-4528**  
**Carrier: Andrist**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1430, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (4 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1430 was placed on the Fourteenth order on the calendar.**

2009 TESTIMONY

HB 1430



HB 1430

North Dakota companies sued in asbestos litigation in state court

Berg Fargo Motor Supply

Building sprinkler Corporation

Farnam's Genuine Parts, Inc.

H.E. Everson Company

Hedahl's, Inc.

Universal Parts Company, Inc.

Fargo-Moorhead Insulation Company

F & C Supply, Inc.



Miller Insulation Co., Inc.

Victor H. Leeby Company

Northern Plumbing Supply, Inc.

Western Steel & Plumbing







**Testimony of Jeb Oehlke  
North Dakota Chamber of Commerce  
House Bill 1430  
January 27, 2009**

Mr. Chairman and committee members my name is Jeb Oehlke, and I am here today representing the ND Chamber of Commerce, the principle business advocacy group in North Dakota. Our organization is an economic and geographical cross section of North Dakota's private sector and also includes state associations, local chambers of commerce, development organizations, convention and visitors bureaus and public sector organizations. For purposes of this hearing we are also representing fifteen local chambers with total membership over 6,500 members. A list of those associations is attached. As a group we stand in support of HB 1430.

The sole aim of this bill is to bring a certain amount of fairness to an area of the law, which because of the rules which currently govern, is inherently unfair, and for this reason it has the business community's support. We agree that companies must be held accountable for their own wrongful actions. However the situation this bill covers is when a company who did nothing wrong is held liable for the actions of another entity.

The successor company is still liable for the predecessor's wrongful actions. However, the amount of liability is limited to the fair market value of the predecessor at the time of the merger. We see this as equitable. The injured party has recourse available, but the innocent successor company will not be forced into bankruptcy for actions it never took part in. We urge a Do Pass on this bill. I am happy to answer any questions at this time.

*THE VOICE OF NORTH DAKOTA BUSINESS*



**The following chambers are members of a coalition that support our 2009 Legislative Policy Statements:**

Beulah Chamber of Commerce – 130 members

Bismarck-Mandan Chamber of Commerce – 1,200 members

Chamber of Commerce of Fargo Moorhead – 1,800 members

Devils Lake Area Chamber of Commerce

Grafton Area Chamber of Commerce

Greater Bottineau Area Chamber of Commerce – 155 members

Harvey Area Chamber of Commerce

Hettinger Area Chamber of Commerce – 145 members

Jamestown Area Chamber of Commerce – 360 members

Kenmare Association of Commerce

Minot Chamber of Commerce – 700 members

North Dakota Chamber of Commerce – 1100 members

Oakes Area Chamber of Commerce – 170 members

Wahpeton Breckenridge Chamber of Commerce – 290 members

Williston Chamber of Commerce – 450 members

Total Businesses Represented = 6,500 members

*THE VOICE of NORTH DAKOTA BUSINESS*

**TESTIMONY OF MARK BEHRENS, ESQ.,  
SHOOK, HARDY & BACON L.L.P.**

**ON BEHALF OF THE  
AMERICAN LEGISLATIVE EXCHANGE COUNCIL**

**IN SUPPORT OF HOUSE BILL 1430,  
AN ACT CONCERNING SUCCESSOR ASBESTOS-RELATED LIABILITY**

**BEFORE THE NORTH DAKOTA  
HOUSE JUDICIARY COMMITTEE**

**JANUARY 27, 2009**

**TESTIMONY OF MARK BEHRENS, ESQ.  
SHOOK, HARDY & BACON L.L.P.  
ON BEHALF OF THE  
AMERICAN LEGISLATIVE EXCHANGE COUNCIL**

Thank you for allowing me to testify on behalf of the American Legislative Exchange Council (ALEC) in support of H.B. 1430. I am an attorney in Shook, Hardy & Bacon L.L.P.'s Washington, D.C.-based Public Policy Group. Most of our firm's practice involves representing corporate defendants in complex civil litigation. I have written extensively on liability issues, including asbestos litigation, and serve as advisor to ALEC's Civil Justice Task Force.

**BACKGROUND**

ALEC is the nation's largest nonpartisan membership association of state legislators. The goal of ALEC's Civil Justice Task Force is to restore fairness, predictability, and consistency to the civil justice system. ALEC's National Task Forces provide a forum for legislators and the private sector to discuss issues, develop policies, and draft model legislation. H.B. 1430 is based on ALEC's model Successor Asbestos-Related Liability Fairness Act, laws enacted in a growing number of states, and Suggested State Legislation approved by the Council of State Governments in December 2006. As advisor to ALEC's Civil Justice Task Force, I had input into the development of the ALEC model bill.

**SUCCESSOR ASBESTOS-RELATED LIABILITY FAIRNESS**

**I. Successor Liability**

By statute or case law, it has become the general rule that when a predecessor merges with another corporation, the successor can be held liable for the torts of the dissolved predecessor—even if the successor did nothing wrong and the activity of the predecessor that created the liability was terminated before the merger. In such circumstances, even if the predecessor is a small company and the successor a large company, an overwhelming injustice can strike employees, shareholders, lenders and other stakeholders of the larger successor.

For example, consider a corporation that has engaged in some kind of business activity that may give rise to liability. If the total gross asset value of that corporation were \$10 million, the maximum amount plaintiffs could collect from that company (even if the plaintiffs could take priority over all the creditors of the company) would be the total asset value of the company. But assume the same corporation merges into a successor corporation worth \$1 billion. Even though that successor itself did nothing wrong, it could be liable for up to its entire \$1 billion solely because the predecessor was merged into it. In mass torts situations like asbestos, when there are many claimants and scores of defendants are already bankrupt, an innocent successor corporation that is solvent can be unjustly singled out and threatened with bankruptcy for wrongs it did not do.

In some circumstances, the rule of successor liability can cause a tremendous injustice, as in the case of Crown Cork & Seal, the inventor of the bottle cap and one of the companies that has been swept into asbestos litigation by plaintiffs' lawyers searching for solvent defendants. Crown never manufactured, sold, or installed a single asbestos-containing product in the company's 100-year history. Yet, the company has been named in over 300,000 asbestos-related lawsuits because of its brief association with a dormant division of a competing bottle cap manufacturer over forty years ago.

In November 1963, Crown purchased a majority of the stock of Mundet Cork Co., a small family-owned manufacturer which made bottle caps, just as Crown did. Before the acquisition, Mundet had a small side business making, selling, and installing asbestos and other insulation. By the time of Crown's stock purchase, however, Mundet had shut down its insulation operations. Crown never operated the insulation manufacturing operation. Within ninety-three days after Crown obtained its stock ownership interest in Mundet, what was left of the Mundet insulation division — idle machinery, leftover inventory, and customer lists — was sold off by Mundet. Mundet also agreed not to enter that business again. Thereafter, Crown acquired all of Mundet's stock and

Mundet, now having only bottle-cap operations, was merged into Crown in January 1966. The cost of the Mundet stock was approximately \$7 million.

As a result of this brief passive ownership, the merger of Mundet into Crown has cost Crown over \$600 million in asbestos-related expenses. Crown's credit rating has been reduced and the company has been forced to pay higher than prevailing interest rates on its borrowing.

Crown's story illustrates the unfairness of asbestos litigation, particularly with regard to the application of outdated successor liability laws. As U.S. Senator Orrin Hatch said on the Senate floor in April 2004: "The trial lawyers have made Crown Cork & Seal pay dearly for the ninety days it owned the insulation division of Mundet. . . . They should never have had to pay a dime to begin with."

Highly regarded scholars such as Professor Richard Epstein, the James Parker Hall Distinguished Service Professor of Law and Director of the Law and Economics Program at the University of Chicago Law School, have argued that a failure to limit liability to the value of the predecessor makes no sense either as legal or economic policy. As Professor Epstein has explained in his torts textbook about successor liability arising from a merger or consolidation:

The black letter rule holds the surviving entity responsible for the torts of all of its predecessor entities. To see the business pitfalls that this rule holds for the unwary, assume that corporation A with assets of \$10 million is merged into corporation B with assets of \$1 billion. Let corporation A make some dangerous product that poses risk of future harms, and all assets of corporation B may be seized to pay for any wrongs that A committed *before* the merger. Yet by operating A as a separate subsidiary, B could continue to insulate its assets from pre-merger liabilities, and perhaps its post-merger liabilities as well. Keeping an acquired corporation alive as a separate subsidiary instead of liquidating it into the acquiring firm typically turns on tax or corporate law considerations unrelated to issues of products liability law. Yet the current regime of successor liability exacts a high price for corporate consolidations that may well make sense for other business or tax reasons. *A better rule would hold B liable as a successor only for the assets descended from the acquired firm (augmented by a suitable rate of return over time), without exposing its separate assets to A's pre-merger liabilities.* (The consolidation should be treated as an assumption of the post-merger liabilities.) (Emphasis added).

## **II. Successor Asbestos-Related Liability Fairness Act**

H.B. 1430, would restore fairness to successor liability by providing that plaintiffs allegedly harmed by the predecessor would be able to collect from the successor no less than the same amount they could have collected if no merger had occurred: the total gross asset value of that predecessor at the time of the merger. The successor would get credit for all the settlements or judgments it has paid or committed to pay since the merger. The successor's liability would cease when it has paid or committed to pay as much as the predecessor's gross assets would now be worth (adjusted upward for the passage of time). Any successor that independently commits a tort—whether before or after a merger—could still be held liable to the full extent of its own assets for any harm it causes.

## **III. Strong Support Exist for this Fair Approach**

Since 2001, laws providing litigation fairness to successor companies like Crown have been enacted in Pennsylvania, Texas, Mississippi, Ohio, Florida, South Carolina, and Georgia. In December 2006, the Council of State Governments approved the Florida and South Carolina laws as Suggested State Legislation. North Dakota H.B. 1430 follows the ALEC/CSG model and would restore fairness to innocent successor defendants in asbestos cases, such as Crown.

## **IV. Conclusion**

Enactment of H.B. 1430 is essential as a matter of fundamental fairness, would benefit roughly a dozen North Dakota families that rely on Crown for pensions and health care benefits, and would help preserve the savings of ordinary citizens in North Dakota that are Crown shareholders including through mutual funds and pension funds.

*Same given to Senate*

**NORTH DAKOTA SHOULD ENACT SUCCESSOR LIABILITY  
REFORM (H.B. 1430) FOR INNOCENT ASBESTOS DEFENDANTS**

The rule of successor liability provides that when a predecessor merges with another corporation, the successor can be held liable for the torts of the dissolved predecessor, even if the successor did nothing wrong and the activity of the predecessor that created the liability was terminated before the merger. In some circumstances, the rule can cause a tremendous injustice, as in the case of Crown Cork & Seal, the inventor of the bottle cap. Crown has been named in more than 300,000 asbestos-related claims even though the company never manufactured, sold, or installed any asbestos-containing products. Crown has been swept into the litigation because of its brief association with a dormant division of a former competitor more than forty years ago.

In November 1963, Crown purchased a majority of the stock of Mundet Cork Co., a small family-owned manufacturer which made bottle caps, just as Crown did. Before the acquisition, Mundet had a small side business making, selling, and installing asbestos and other insulation. By the time of Crown's stock purchase, however, Mundet had shut down its insulation operations. Crown never operated the insulation manufacturing operation. Within ninety-three days after Crown obtained its stock ownership interest in Mundet, what was left of the Mundet insulation division — idle machinery, leftover inventory, and customer lists — was sold off by Mundet. Mundet also agreed not to enter that business again. Thereafter, Crown acquired all of Mundet's stock and Mundet, now having only bottle-cap operations, was merged into Crown in January 1966. The cost of the Mundet stock was approximately \$7 million.

As a result of this brief passive ownership, the merger of Mundet into Crown has cost Crown over \$600 million in asbestos-related expenses. Crown's credit rating has been reduced and the company has been forced to pay higher than prevailing interest rates on its borrowing. According to U.S. Senator Orrin Hatch, "The trial lawyers have made Crown Cork & Seal pay dearly for the ninety days it owned the insulation division of Mundet. . . . They should never have had to pay a dime to begin with."

In recent years, Texas, Mississippi, Ohio, Pennsylvania, Florida, South Carolina, and Georgia have enacted laws to address the injustice caused by the application of outdated successor liability laws to innocent asbestos defendants. Similar legislation has been introduced in many other states. This legislation specifically limits payments that a company as a successor by merger must pay as a result of asbestos claims, reducing the jeopardy of innocent corporations by fairly altering (but not extinguishing) remedies available to asbestos plaintiffs. The laws are based on model legislation developed by the American Legislative Exchange Council. In December 2006, the Council of State Governments voted to approve the Florida and South Carolina laws as Suggested State Legislation.

North Dakota should follow the ALEC/CSG model and adopt H.B. 1430 to restore fairness to successor liability by providing that plaintiffs allegedly harmed by a predecessor can collect from the successor no less than the same amount they could have collected if no merger had occurred: the total gross asset value of that predecessor at the time of the merger. The successor would receive credit for settlements or judgments it has paid or committed to pay since the merger. The successor's liability would cease when it has paid or committed to pay as much as the predecessor's gross assets would now be worth (adjusted upward for the passage of time). Any successor that independently commits a tort, whether before or after a merger, could still be held liable to the full extent of its own assets for any harm it causes.

Enactment of H.B. 1430 is essential as a matter of fundamental fairness, would benefit roughly a dozen North Dakota families that rely on Crown for pensions and health care benefits, and would help preserve the savings of ordinary citizens in North Dakota that are Crown shareholders including through mutual funds and pension funds.





CROWN CORK &amp; SEAL

Asbestos Liability Background - IndianaSB469 Indiana  
634-4898  
FAX

Crown Cork & Seal was founded in 1892 by the inventor of the bottle cap and is the world's leading manufacturer of consumer packaging products. Crown and its affiliated companies employ over 20,000 people and make one out of every five beverage cans in the world and one out of every three food cans used in North America and Europe. Crown also has over 15,000 retirees in the USA who rely on Crown for their pension checks and health care coverage.

Crown Cork & Seal -- although it never manufactured, sold, or installed a single asbestos-containing product -- has been named to an increasing number of asbestos related lawsuits in Indiana and other states, due to its very brief association with Mundet Cork Company.

These claims against Crown Cork & Seal arise from a stock interest the company obtained in 1963 in the Mundet Cork Company, a small family-owned manufacturer of cork-lined bottle caps. Before the acquisition, Mundet also had a small side business as a manufacturer of asbestos and other insulation products. By the time of Crown's stock purchase, however, Mundet had completely shut down its insulation manufacturing operations.

Within 93 days of Crown's obtaining its interest in Mundet, what was left of the Mundet insulation division -- idle machinery, leftover inventory, and customer lists -- was sold to a New Jersey insulation company. Two years later, in 1966, Mundet, now having only the bottle-cap operation that Crown sought to acquire, was merged into Crown.

Although Crown never manufactured, sold or installed a single asbestos product, claimants have enjoyed an enormous windfall, with more than 300,000 claims against Crown, costing the company hundreds of millions of dollars. In fact, Crown's initial investment of \$7 million in Mundet nearly 40 years ago has resulted in more than \$600 million in asbestos-related payments by Crown through the end of last year.

While some claim Crown should have exercised greater due diligence before it became involved with Mundet, it was not until 1972 that OSHA established its first regulations covering asbestos, a material that up to that time was widely used as the world's best insulation material. In addition, it was not until the mid-1970s that personal injury lawsuits began to be filed in connection with asbestos.

Because many companies that actually were involved with asbestos have been forced into bankruptcy under the weight of asbestos litigation, Crown has found itself a target and sued in an increasing number of joint-and several-liability claims.

With Crown at great risk of bankruptcy under the weight of these lawsuits, the legislatures of Pennsylvania, Texas, Mississippi, Ohio, Florida, Georgia and South Carolina have responded to enact bipartisan legislation limiting successor's asbestos liabilities under circumstances like these. In so doing, a cap on such liability equal to the inflation adjusted gross asset value of the predecessor asbestos-tainted company has been established.

On a state level, Crown operates a large manufacturing facility in Crawfordsville, Indiana. It employs approximately 100 people. There are almost 650 retirees in the State who rely on Crown pension checks and its health and dental benefits. Crown and its employees pay several million dollars in various taxes in the state.

Enactment of the proposed legislation in Indiana will help Crown to obtaining refinancing, avoid bankruptcy and, thus, assure the preservation of jobs in the USA and in the state of Indiana.

ORIGINAL

Informational Brief of  
David C. Thompson, P.C.<sup>1</sup>  
Re: North Dakota House Bill No. 1430  
The so-called "Innocent Successor Liability Act"

During the week of January 12-16, 2009, lawyers from the Washington, D.C., office of the Kansas City-based law firm Shook, Hardy & Bacon, P.L.L.P.<sup>2</sup>, visited Bismarck -- and discussed with North Dakota legislators draft legislation which became introduced on January 15, 2009, as House Bill 1430.

One Washington-based lawyer from this Shook, Hardy & Bacon firm -- Corey Schaecher -- spoke with North Dakota legislators, legislative staff, and took other actions at the State Capitol during the week of January 12-16, 2009 -- for the purpose of securing passage of the proposed legislation which on January 15<sup>th</sup> became filed and designated as House Bill 1430. Throughout the time that he undertook these activities, Shook Hardy lawyer Corey Schaecher was never registered as a lobbyist with the office of the North Dakota Secretary of State. See, *North Dakota Century Code Chapter 54-05.1, specifically North Dakota Century Code Sections 54-05.1-01 through 54-05.1-07, which latter section states that "(a)ny person who violates any provisions of this chapter is guilty of [a criminal offense – either a Class B Misdemeanor or an Infraction, depending upon the particular section violated]."*

**To be clear — North Dakota House Bill 1430 does not benefit any North Dakota business – and House Bill 1430 does not benefit any North Dakota employer.**

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<sup>1</sup> David C. Thompson, P.C., a North Dakota Professional Corporation, is a one-lawyer law firm, based in Grand Forks, North Dakota. The principal in this firm -- attorney David C. Thompson -- has represented victims of asbestos-caused diseases in personal injury and wrongful death actions venued in North Dakota state and federal courts since June of 1984.

<sup>2</sup> Shook, Hardy & Bacon, P.L.L.P., is a law firm headquartered in Kansas City, Missouri, has for many years represented companies which manufactured asbestos products. *Shook Hardy is probably best known, however, for its long-time role as national defense counsel for cigarette manufacturers in the so-called "tobacco litigation."* In fact, on the tobacco document website – [tobaccodocuments.org](http://tobaccodocuments.org) – Shook, Hardy & Bacon figures in some 61,000 separate documents. See, the following web link:  
<http://tobaccodocuments.org/all/documents.php?pattern=shook+hardy+bacon>

Rather, North Dakota House Bill 1430 is a piece of proposed legislation which is essentially identical to at least two others which were introduced in *other* state legislatures during that same week. Virginia House Bill 1762 -- and Indiana Senate Bill 469 -- were both introduced in those state legislatures on the preceding day, January 14, 2009. ***See, and compare to North Dakota House Bill 1430 - Virginia House Bill 1762, and Indiana Senate Bill 469, copies of which being attached hereto as Exhibits 10 and 11, respectively.***

The efforts in Virginia were begun last year -- when lobbyists associated primarily with company known as Crown Holdings, Inc. -- *the parent of a corporation known as Crown Cork & Seal* -- sought to introduce a bill virtually identical in language to North Dakota House Bill 1430. That earlier Virginia bill met with substantial opposition -- *and was never offered*. Crown Holdings continued working in the shadows, and on January 14, 2009, offered in Virginia a substantially identical bill -- known as House Bill No. 1762 -- which is being touted as a "reform for innocent asbestos defendants." ***[It should be noted that neither Crown Holdings, Inc., nor Crown Cork & Seal Company, Inc. -- both Pennsylvania corporations -- are registered or licensed by the North Dakota Secretary of State to do business here in North Dakota].***

Like its identical Virginia twin -- North Dakota House Bill 1430 is unconstitutional special legislation, which benefits a single corporation, and retroactively deprives victims of asbestos disease of substantive property rights, and it will ultimately have ripple effects which will throw settled contract and corporate law expectations into a condition of unpredictable flux.

Crown Cork and Seal and its lobbyists have claimed that this bill will help the Company's corporate bond rating. But the truth is -- passing this bill in North Dakota -- or in Virginia -- or in Indiana -- will do ***nothing*** for Crown's bond rating -- so as long as the other forty-five (45) or so other jurisdictions in this country do not have such legislation.

Crown's lobbyists in Virginia also have threatened that continuing to allow litigation against Crown in that state will supposedly throw Crown into dire economic straights -- and will result in lost *Virginia* jobs. Even that is apparently a false claim. The truth is that Crown certified to the federal Securities Exchange Commission (SEC) in 2007 that it made \$7.7 billion in net sales for that year, 75% of which came from overseas markets. It also certified that its *total forecast for pending and future asbestos costs* for the entire company was \$100 million less than the interest for a single year on its corporate debt instruments.

**Either way, it is beyond dispute that Crown Cork & Seal – and its parent company Crown Holdings, Inc. – are Pennsylvania corporations which are not licensed to do business in North Dakota – and which do not have any manufacturing, distribution or sales business operations in this state.**

As the Virginia legislature has recently been informed -- the bottom line is that this bill is unconstitutionally retroactive, is unconstitutional special legislation, has enormous potential for adverse unintended consequences, will not improve Crown's bond rating, and it will not even save *Virginia* jobs -- a state where -- *unlike North Dakota* -- Crown *does* have manufacturing operations.

### **BACKGROUND**

Crown Holdings, the leading proponent of this bill, is the parent of Crown Cork & Seal. Crown Cork & Seal was founded in 1892.<sup>3</sup> See *Crown's Website*, [http://www.crowncork.com/about/about\\_history.php](http://www.crowncork.com/about/about_history.php) (last accessed January 13, 2009). By 1927, Crown operated manufacturing plants in Germany, France, the United Kingdom, South America and in the Orient, and its net sales reached \$11 million. *Id.* Crown's website boasts that it prospered

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In connection with a major restructuring of corporate debt in 2003, Crown Cork & Seal reorganized itself and made itself a wholly owned subsidiary of Crown Holdings, Inc.

during the 1930s, the decade of the depression, “selling half of the world’s supply of bottle caps.” *Id.* By 1949 — the year that the Journal of the American Medical Association recognized asbestos as a cause of cancer, and seven years after the Virginia Workers Compensation Act recognized asbestosis as a compensable occupational disease — Crown was already a sophisticated multinational corporation capable of availing itself of the finest medical, scientific, market and legal research and advise.

Twenty years later, in November 1963, Crown’s board of directors determined that it would be beneficial to the company to purchase 16,689 shares of the stock of Mundet Cork Corporation, which amounted to 70% of the total outstanding shares. **See Exhibit 1, attached hereto, *Purchase Agreement* at 1.** Mundet had two divisions. One of Mundet’s divisions competed with Crown in the cork and seal market. Mundet’s other division had been involved in the asbestos insulation business for decades, contracting to install other companies’ asbestos insulation products in commercial and industrial properties, including schools and other government-owned premises. By the time Crown purchased its controlling share in Mundet, Mundet was manufacturing its own line of asbestos insulation products including 85% magnesia asbestos board, block and pipe insulation and an asbestos-containing calcium silicate insulation line. **See Exhibit 2, attached hereto, *Excerpt of Deposition of E.J. Stansbury, Dec. 16, 1983*, at 8-14.** Crown knew about Mundet’s asbestos insulation business, but it purchased both divisions of Mundet without any attempt to limit the transfer of Mundet’s preexisting asbestos insulation liabilities.

Three months later, Mundet — now a division of Crown — sold its thermal insulation division to another corporation, Baldwin Ehret Hill (BEH). **See Exhibit 3, attached hereto, *Sale Agreement dated Feb. 8, 1964*.** But while BEH purchased the insulation branch of Crown’s

Mundet division, it expressly agreed to absorb **only** Mundet's post-1964 liabilities. *See id.* at sixth page, Titled "Assumption;" *see also Satterfield v. Crown Cork & Seal Co.*, 268 S.W.2d 190, 2008 Tex. App. LEXIS 7473, at \*6 (Tex. App. Austin 2008). Thus Crown's Mundet division still owned all of Mundet's asbestos pre-1964 asbestos liabilities after the BEH sale.

*In 1966 — two years after the BEH sale and two years after Selikoff's 1964 New York conference establishing asbestos as the sole known cause of mesothelioma — Crown purchased the remainder of Mundet's stock and formally merged Mundet, along with its preexisting asbestos liabilities, into itself. See Exhibit 4, attached hereto, Merger Agreement.*

Even though Crown knew or should have know of the dangers of asbestos, knew that BEH refused to acquire the Mundet's pre-1964 liabilities, and knew that Mundet therefore retained those liabilities, Crown again chose not to take any steps to limit its assumption of liability. *Id.*

In 1976, Crown began to be named as Mundet's successor-in-interest in an increasing number of asbestos lawsuits. Crown filed a petition for declaratory judgment in its home state of Pennsylvania against four of its own insurance providers and Aetna Casualty & Surety Company "the primary liability insurance carrier for Mundet for the years 1950 through July 1, 1960" seeking to require them to defend it in the litigation and to pay any settlements or verdicts. *Crown Cork Seal, Inc. v. Aetna Casualty & Surety Co.*, 16 Pa. D. & C.3d 525, 527, 1980 Pa. Dist. & Cnty. Dec. LEXIS 248, 2 (Comm. Pleas Ct., Philadelphia Cty 1980) (*attached hereto as Exhibit 5*). In the petition, Crown "claim[ed] that all of these cases arise because of its ownership of Mundet Corporation and its Thermal Insulation Division." *Id.* It further averred that each of the insurance companies had insured either Crown or Mundet during various periods until Crown became self-insured in 1976. *Id.*

In 1985, Crown and its insurers reached a settlement under which the insurers agreed to compensate Crown “for settlement or judgment costs (“indemnity costs”) and defense and other administrative costs.” *Crown Cork & Seal, Inc. v. Emp. Ins. Of Wausau*, Civ. Action No. 99-4904, Memorandum Order (E.D. Pa. 1999) (*attached hereto as Exhibit 6*). This arrangement lasted through 1998 when Crown’s insurance was depleted. *See Exhibit 7, attached hereto, 2007 Annual Report*, at 53, available at the web link: <http://investors.crowncork.com/phoenix.zhtml?c=85121&p=irol-reports> (last visited January 13, 2009) (“Prior to 1998, the amounts paid to asbestos claimants were covered by a fund made available to Crown Cork under a 1985 settlement with carriers insuring Crown Cork through 1976, when Crown Cork became self-insured. The fund was depleted in 1998 and the Company has no remaining coverage for asbestos-related costs.”). Apparently, for twenty years Crown and its insurers (including Mundet’s insurer from 1950 to 1960) felt that the claims against Crown were sufficiently valid to warrant a significant outlay of capital. During that entire twenty-year period, moreover, Crown did not seek the kind of legislation it seeks today.

Though Crown’s insurance fund is now depleted, Crown is still liable for Mundet’s asbestos liabilities. Even so, Crown admits in its latest annual report that “resolution of” Crown’s asbestos liabilities “is not expected to have a material adverse effect on the Company’s financial position.” *Exhibit 7, attached hereto, 2007 Annual Report*, at 55.

Indeed, Crown still is a prosperous multinational corporation. Currently headquartered in Pennsylvania, as of December 31, 2007 Crown “operated 141 plants along with sales and service facilities throughout 41 countries and had approximately 21,800 employees.” *Id.* at 1. Crown’s most recent annual report boasts *net* sales of \$7.7 billion in 2007. *Id.* (emphasis added). And 73% of these sales were “derived from operations *outside* the United States, of which 74% of

these non-U.S. revenues were derived from operations in the Company's European Division." *Id.* (emphasis added). To be sure, Crown's domestic sales are a fraction of its overall business; its Virginia operations are even smaller.

Crown's "products are sold in highly competitive markets" and Crown is a master in marketing and sales. *Id.* at 4. Applying that experience to legislation, Crown now attempts to peddle bills to State legislatures in an attempt to obtain special legislation to immunize itself against its own misjudgments.

Falsely characterizing itself as a naive and innocent successor to Mundet, Crown has succeeded in having similar versions of North Dakota House Bill 1430 passed in Texas, Florida, Georgia, South Carolina, Ohio, Mississippi and Pennsylvania. But the Supreme Court of Crown's own home state, Pennsylvania, has already declared this legislation to be an unconstitutional deprivation of the vested or inchoate rights of the innocent asbestos victims against whom the act operates. *See Ieropoli v. AC&S Corp.*, 842 A.2d 919 (Pa. 2004). Similarly, Georgia invalidated a larger act that contained a similar successor provision as being unconstitutionally retroactive. *Daimler Chrysler Corp. v. Ferrante*, 637 S.E.2d 659 (Ga. 2006). And the Texas Supreme Court is currently considering a similar challenge. *See Robinson v. Crown Cork & Seal, Inc.*, 2008 Tex. Lexis 5 (Jan. 11, 2008); and see also *Braley-Satterfield v. Crown Cork & Seal, Inc.*, 268 S.W.3d 190 (Tex. App. 3<sup>rd</sup> Dist 2008) (holding the Texas statute unconstitutional).

In addition, bills such as North Dakota House Bill 1430 have been voted down in other states – including Delaware – the statutory home of a majority of the largest of America's corporations.



Virginia legislators have been recently informed that Virginia House Bill No. 1762 – *North Dakota House Bill 1430's identical twin* – likewise, is unconstitutional special legislation which would deprive residents of the Commonwealth of Virginia of substantive vested or inchoate rights without due process of law in violation of Article I, § 11 of the Virginia Constitution and that may have far reaching consequences to Virginians. Virginia legislators have been told that Crown is the only entity that will benefit from this bill – and that accordingly, that accordingly, Virginia should reject it.

**I. NORTH DAKOTA HOUSE BILL 1430 – LIKE ITS TWIN, VIRGINIA HOUSE BILL NO. 1762 – IS UNCONSTITUTIONAL AND WILL DEPRIVE NORTH DAKOTANS OF SUBSTANTIVE PROPERTY RIGHTS WITHOUT DUE PROCESS OF LAW.**

Article I, section 11 of the Virginia Constitution states “no person shall be deprived of his life, liberty, or property without due process of law . . . .” Va. Const. Art. I, § 11.<sup>4</sup> The Virginia Supreme Court “has consistently held” that this clause “protects not only rights that have vested, but also substantive property interests which may ripen into vested rights.” *Norfolk Sch. Bd. v. U.S. Gypsum Co.*, 234 Va. 32, 38, 360 S.E.2d 325, 328 (1987). “Although a typical common-law plaintiff’s right to sue does not accrue until he has sustained injury, and the statute of limitations only then begins to run as to him, certain rights and obligations may have become fixed at an earlier time when the wrongful act was done — when the cause of action arose. Those rights may be vested rights, entitled to constitutional protection. *Even where not vested, they may be substantive rights which the legislature may not constitutionally abridge.*” *Roller v. Basic Constr. Co.*, 238 Va. 321, 328, 384 S.E.2d 323, 326 (1989) (emphasis added); *see also*

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<sup>4</sup> As the North Dakota Supreme Court noted in *City of Belfield v. Kilkenny*, 2007 ND 44, P 7, 729 N.W.2d 120, 123 (N.D. 2007), the almost identically-worded Due Process Clause of the North Dakota Constitution is Article I, Section 12, which provides that, “No person shall . . . be deprived of life, liberty or property without due process of law.”

*Norfolk Sch. Bd.*, 234 Va. at 38, 360 S.E.2d at 328 (“It is immaterial to our decision whether this right is characterized as ‘vested’ or as ‘substantive.’”). In short, even though “[s]ubstantive rights” are “not necessarily synonymous with vested rights,” both are accorded constitutional protection. *Shiflet v. Eller*, 228 Va. 115, 120, 319 S.E.2d 750, 754 (1984).<sup>5</sup>

In reviewing this bill, it is important to keep in mind the longstanding distinction between rights of action and causes of action and the interplay between these two concepts and asbestos-related diseases. See, e.g., *Caudill v. Wise Rambler, Inc.*, 210 Va. 11, 13, 168 S.E.2d 257, 260 (1969); *Locke v. Johns-Manville Corporation*, 221 Va. 951, 957, 275 S.E.2d 900, 904 (1981); *First Va. Bank-Colonial v. Baker*, 225 Va. 72, 301 S.E.2d 8 (1983) (noting that the distinction between a right of action and a cause of action is “a distinction *with* a difference” (emphasis in original)). Correctly defined, a “right of action is the right to presently enforce a cause of action – a remedial right affording redress for the infringement of a legal right to some definite person; a cause of action is the operative facts which give rise to such right of action.” *First Va. Bank*, 225 Va. at 81, 301 S.E.2d at 13.

In *Caudill*, the Court noted that “[t]here may be several rights of action and one cause of action and rights may accrue at different times from the same cause.” *Caudill*, 210 Va. at 13, 168 S.E.2d at 260. A *potential or inchoate cause of action* arises at the time of the negligent act. See *Caudill*, 210 Va. at 14, 168 S.E.2d at 259-60 (noting the plaintiff had “a potential cause of action for personal injuries” at the time of the breach of the implied warranty although she had not yet been harmed by the breach); *Shiflet*, 228 Va. at 121, 319 S.E.2d at 754 (noting that the plaintiff’s inchoate cause of action for contribution arose “at the time of the jointly negligent

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Additionally, the Supreme Court has further noted that a “statute premised upon the police power ‘is subject to the constitutional guarantee that no property shall be taken without due process of law and where the police power conflicts with the Constitution the latter is supreme.’” *Norfolk Sch. Bd.*, 234 Va. at 39, 360 S.E.2d at 329. If this were not so, the Court continued, “no property right, indeed no personal right, could co-exist with it.” *Id.*

acts” but that his right of action did not accrue until he pays a claim for which others tortfeasors are liable); *Norfolk Sch. Bd.*, 234 Va. at 38, 360 S.E.2d at 328 (“We concluded that the right,, although inchoate, is substantive, and we held that ‘substantive’ rights, as well as ‘vested’ rights, are included within those interests protected from retroactive application of statutes.”). The cause of action vests at the time the plaintiff is harmed or injured by the negligent act. *See Locke*, 221 Va. at 957, 275 S.E.2d at 904 (noting that a “cause of action does not evolve,” or vest unless there is a duty, breach of the duty, and a harm or damage to the plaintiff). Once a cause of action vests, a right of action may accrue. But “[t]here is no right of action until there is a cause of action.” *Id.*

Normally a right of action and a cause of action accrue at the same time. But in occupational disease cases, this is not necessarily so. Asbestos-related diseases, in particular, have latency periods of 10 to 50 years from exposure to diagnosis. And an asbestos-induced tumor may begin to develop in a victim as long as 10 years before it is diagnosed. *See Exhibit 8, attached hereto, Excerpt of Trial Testimony of Dr. John Maddox, March 28, 2007*, at 764-65, 769-70. According to *Locke*, once “the tumor – the hurt – the harm – the injury” occurs, the victim has a vested cause of action. *Locke*, 221 Va. at 958, 275 S.E.2d at 905.

Yet, by operation of *North Dakota Century Code Section 28-01.3-08(4)* – a statute directly analogous to its similar Virginia Code counterpart, § 8.01-249 (4) – a right of action for an asbestos-related disease does not accrue until “the injured person has been informed of discovery of the injury by competent medical authority and that the injury was caused by exposure to asbestos as described in this section . . . .” (*emphasis added*). So, asbestos disease cases are particularly emblematic of the distinction between rights of action and causes of action.

Therefore – under either North Dakota law – or Virginia law – if a person was exposed to insulation manufactured or installed by Mundet, that person may own a substantive inchoate cause of action against Crown — Mundet’s legal successor-in-interest — from the time he was exposed in the 1950s or early 1960s. **See, e.g., this principle as implicit in the holding of the North Dakota Supreme Court in *Biesterfeld v. Asbestos Corporation of America*, 467 N.W.2d 730, 736-739 (N.D. 1991).**

For example, if the asbestos-caused tumor began to grow in the year 2000 (after a typical 40 to 50 year latency period from the time of exposure) – then the plaintiff’s *cause of action* technically would have vested in 2000 — the time when the plaintiff was harmed. But if the cancer is not diagnosed for another nine years, until July 30, 2009, then the plaintiff’s *right of action* would not accrue until that time.

Given this hypothetical, and assuming North Dakota House Bill 1430 or Virginia House bill 1762 is enacted and becomes effective on August 1, 2009 (*July 1, 2009 for the Virginia statute*), Crown’s statute would ***retroactively*** extinguish the following substantive rights: (1) the plaintiff’s inchoate cause of action, a “substantive property interests which may ripen into [a] vested right,” *Norfolk Sch. Bd.*, 234 Va. at 38, 360 S.E.2d at 328, which had existed for 40 to 60 years from the time of exposure, and (2) the plaintiff’s vested cause of action which matured in 2000 and has existed for 9 years, and (3) assuming the Plaintiff had filed, but not tried, his case prior to July 1, 2009, the plaintiff’s accrued right of action on that cause of action. *See the final section of North Dakota House Bill 1430, which provides that, “(t)his chapter applies to all asbestos claims filed against an innocent successor on or after the effective date of this Act [August 1, 2009]. This chapter also applies to any pending asbestos claims against an innocent successor in which trial has not commenced as of the effective date . . . .”*

The fact is that because of this interplay between inchoate substantive rights, vested causes of action, rights of action, and asbestos disease latency, Crown's bill is fatally and unworkably unconstitutional. Any claim filed even prospectively would necessarily involve a longstanding inchoate substantive rights dating back 40 to 50 years and likely a vested cause of action based on a tumor or fibrotic condition that has been developing in the victim, but was undiagnosed, for as many as ten years before the claim is filed. Crown's statute will unavoidably retroactively destroy "substantive property interests which may ripen into vested rights," *Norfolk Sch. Bd.*, 234 Va. at 38, 360 S.E.2d at 328, and ongoing vested rights, and "the retroactive application of a statute impairing a 'substantive' right violates due process and is therefore unconstitutional." *Potomac Hospital Corp. v. Dillon*, 229 Va. 355, 360, 329 S.E.2d 41, 45 (1985).

## **II. CROWN'S BILL IS VIOLATIVE ARTICLE I, SECTION 21 --THE EQUAL PROTECTION CLAUSE OF THE NORTH DAKOTA CONSTITUTION.**

Article I, Section 21 of the North Dakota Constitution, described by the North Dakota Supreme Court in *Dickie v. Farmer Union Oil Company*, 2000 ND 111, 611 N.W.2d 168 (N.D. 2000), as the "Equal Protection Clause of the North Dakota Constitution" provides as follows:

### **N.D. Const. Art. I, §§ 21 (2008)**

#### **Section 21. [Privileges or immunities]**

No special privileges or immunities shall ever be granted which may not be altered, revoked or repealed by the legislative assembly; nor shall any citizen or class of citizens be granted privileges or immunities which upon the same terms shall not be granted to all citizens. *Const. 1889, Art. I, §§ 20.*

In *Dickie, supra*, 2000 ND 111, ¶¶ 4-5 & 9, 611 N.W.2d at 169-170, & 171-172 -- decisional precedent which would likely provide the foundation for invalidating any law

established by an enactment of House Bill 1430 – the North Dakota Supreme Court declared unconstitutional – *on Equal Protection grounds* – the Product Liability Statute of Repose of N.D.C.C. Section 28-01.3-08, explaining as follows, in language particularly applicable to the current circumstances of House Bill 1430:

Section 28-01.3-08, N.D.C.C., as enacted by the legislature in 1995, provides in relevant part:

*28-01.3-08. Statute of limitation and repose.*

1. Except as provided in subsections 4 and 5, there may be no recovery of damages in a products liability action unless the injury, death, or property damage occurs within ten years of the date of initial purchase for use or consumption, or within eleven years of the date of manufacture of a product.

This Court, in *Hanson v. Williams County*, 389 N.W.2d 319, 328 (N.D. 1986), declared unconstitutional a substantively identical statute of repose, enacted by the 1979 legislature and codified at N.D.C.C. §§ 28-01.1-02.(1)

In *Hanson* we applied an equal protection analysis to the 1979 statute of repose and determined it involved important substantive rights requiring an intermediate standard of review:

A statute of repose period begins to run from the occurrence of some event other than the event of an injury that gives rise to a cause of action and, therefore, bars a cause of action before the injury occurs. A person injured after the statutory period of repose is left without a remedy for the injury.

*Id.* at 321.

*While there are economic consequences for manufacturers and their insurers underlying the legislation in question, we believe our focus must be on the individuals affected. We are unwilling to view human life and safety as simply a matter of economics. . . . The right to recover for personal injuries is an important substantive right. We conclude that the appropriate standard of review to be applied in the present case is the intermediate standard or the close correspondence test.*

*Id.* at 325 (citation omitted).

*The question, therefore, is whether or not there is such a close correspondence between this statutory classification and the legislative goals as would justify this classification.*

*Id.* at 327. In performing the equal protection analysis in *Hanson*, this Court expressed its concern about statutes "which arbitrarily deny one class of persons important substantive rights to life and safety which are available to other persons." *Id.* at 328. This Court stated the legislature had failed to advance a basis for selecting the period of years for bar or repose other than the economic interests of the manufacturers and suppliers and concluded there was no close correspondence between the legislative goals and the classification created by the statute to withstand the equal protection challenge. *Id.* . . . . . We have carefully reviewed the legislative history of the 1995 enactment of N.D.C.C. §§ 28-01.3-08 and we find no more supportive evidence demonstrating a close correspondence between the stated legislative objectives and the classification created by the 1995 statute of repose than existed in the 1979 enactment of its predecessor. There is simply no showing within the testimony or data submitted in consideration of the 1995 legislation that litigation brought by victims injured more than 10 years from the initial date of purchase of a product or 11 years from its manufacture, as compared to persons injured within those time periods, has caused inequity, unfairness, or unreasonable exposure and unpredictability for manufacturers or suppliers in civil litigation. There is simply no demonstration by the testimony or evidence submitted to the legislature which shows harm or prejudice to sellers and manufacturers resulting from damage awards against them for injuries incurred more than 10 years from initial purchase or 11 years from manufacture of defective products. *We, therefore, hold there is not a close correspondence between the legislative objectives under N.D.C.C. §§ 28-01.3-08 and the classification created thereunder to withstand an equal protection challenge under N.D. Const. art. I, §§ 21.* (emphasis added)

Therefore, under this compelling authority of *Dickie v. Farmers Union Oil Company*, *supra*, where the "ten-year/eleven-year" Product Liability Statute of Repose of N.D.C.C. 28-01.3-08 could not survive the heightened level of scrutiny which the North Dakota Supreme Court applied in its "close correspondence" test under the North Dakota Constitution's Article I, Section 21, the "special legislation" proposed by House Bill 1430 would not even have a chance of being sustained in the face of an Equal Protection challenge.

### **III.. Crown's Bill Has The Potential To Release Or Diminish Crown's Liability To The State of North Dakota Or Its Political Subdivisions.**

Throughout the 1950s and early 1960s, Crown Cork & Seal's predecessor Mundet provided and/or installed asbestos insulation products to commercial buildings throughout the United States. See, e.g., *Exhibit 2 attached hereto, Excerpt of Deposition of E.J. Stansbury, Dec. 16, 1983*, at 17 (testifying that Mundet provided asbestos thermal insulation "[o]n all the pipe and/or equipment like schools, hospitals, just commercial buildings.").

As an insulation contractor that may have provided or installed asbestos insulation to commercial buildings owned by the State of North Dakota or its subdivisions, Crown, as Mundet's successor-in-interest may be liable to the State of North Dakota in tort or for remediation or abatement costs.

### **IV. Crown's Bill Is Drawn To Grant Crown a Special immunity Intended To Benefit A Single Private Corporation.**

House Bill 1762 has been crafted and tailored to grant a special immunity to one particular corporation – Crown. As was stated earlier, similar statutes have been passed with varying success in Pennsylvania, South Carolina, Florida, Georgia, Ohio and Texas. And as was discussed in Section I, this bill and other statutes like it provide a complete affirmative defense to successor liability for virtually all pending and all future claims.

But though such as defense is arguably available, we have been unable to discover any corporation other than Crown that has actually taken advantage of one of the already enacted statutes as a defense in any of these seven states. In Texas litigation, Crown itself did not dispute that the Texas statute creates a class of one, and it was unable to identify even one other possible member of the putative "class" defined by the statute. And Kevin Collins, Crown's expert who prepared a report on the fair market value of Crown's predecessor during the Texas



litigation, testified that despite performing over 750 valuations a year, he did not know of a single company other than Crown to which this statute would apply.<sup>6</sup>

This likely is because the Crown's bill was plainly tailored to fit Crown's specific corporate history, and was not to be a general law designed to effectuate public policy. First, the details defining the class fit Crown perfectly. House Bill 1430 applies only to corporations (not any other form of business entity) that incurred successor asbestos liability in connection with a merger or consolidation, or based on the exercise of control or the ownership of stock of the predecessor before the merger or consolidation. Crown first acquired its successor liability by exercising control of Mundet after purchasing a majority of its stock, before later merging with it. **See Exhibits 1 & 4, attached hereto.** The bill applies only to corporations that did not continue in the asbestos business, which Crown claims it has not. House Bill 1430. And the bill contains a curious paragraph excluding from the effect of the bill "rights and obligations of an insurer, transferor, or successor under an insurance contract or any related agreements, including preenactment settlements resolving coverage-related disputes, and the rights of an insurer to seek payment for applicable deductibles, respective premiums, or self-insured retentions or to seek contribution for uninsured or self-insured periods or periods . . . ." House Bill 1430, Section 4, Subsection 3. This provision describes Crown's liability insurance history, as set forth above under the Background section, to a tee. *See infra*, Background; **see also Exhibits 5, 6; Exhibit 7, at 53, said exhibits being attached hereto.**

Similarly telling are two details tied specifically to Crown's corporate history. First, Crown's formal merger with Mundet did not occur until 1966. **See, Exhibit 4, attached hereto.** The bill protects only those corporations whose first relevant successorship transaction occurred

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<sup>6</sup> We were told of this testimony by plaintiff's counsel in the Texas successor liability litigation. We are attempting to obtain a copy of the transcript and will forward it when it is available.

before January 1, 1972. *Subsection 3 of Section 1 of House Bill 1430.* Crown has argued before the Indiana Senate in support of Indiana Senate Bill 469, that this date is timed to correspond to the promulgation of OSHA and that “innocent” successor corporations would have been less likely to know of the dangers of asbestos before this time.

*In a fact which blatantly exposes the proponents’ arguments with respect to the January 1, 1972 “backwards immunity” date in House Bill 1430 to be particularly without merit – Crown’s specific predecessor – Mundet Cork – had been named as a defendant – and had been found legally liable – and/or had voluntarily entered into monetary settlements – in asbestos disease workers compensation cases dating as far back as the year 1954!* See, the treatise, *Asbestos: Medical and Legal Aspects*, Dr. Barry I. Castleman, Fifth Edition, Aspen Publishers, New York, (2005), ISBN 0-7355-5260-6, at pages 175 & 180-182, a copy of which excerpt being *attached hereto as Exhibit 12.*<sup>7</sup>

As an additional example – *the Virginia Workers Compensation Act recognized the deadly disease of asbestosis as a compensable occupational disease in 1942*, and Crown, as the owner of two plants in Virginia, is presumed to have actual knowledge of the Commonwealth’s statutes. Moreover, the Journal of the American Medical Association reported the link between asbestos and cancer in 1949. But, of course, if either Virginia House Bill 1762 – or North Dakota House bill 1430 – had used these dates, it would not benefit Crown.

Second, Crown changed its state of incorporation from New York to Pennsylvania via a merger and consolidation in 1989. To accommodate this further transfer of successor liability, the bill provides that as long as the original transaction yielding successor liability took place

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<sup>7</sup> It should be noted that earlier editions of Dr. Castleman’s treatise, “*Asbestos: Medical and Legal Aspects*”, have been accorded “learned treatise” status – under court evidence rules, by the United States District Court for the District of North Dakota in *In re: North Dakota Asbestos Personal Injury Litigation No. 1*, 737 F.Supp. 1087, 1091 (D. N. D. 1990), and by the Delaware Supreme Court in *Nutt v. Nicolet*, 525 A.2d 146, 148 (Del. 1987), and both of these cases, and Dr. Castleman specifically, were discussed by the North Dakota Supreme Court in *Anderson v. A.P.I. Company*, 1997 ND 6, PP 6-19, 559 N.W.2d 204, 206-209 (N.D. 1999).

before January 1, 1972, the bill's original limitation of liability survives intact through an infinite number of subsequent transactions, no matter when they took place. House Bill 1430, at Section 1, Subsection 4 thereof..

Because the current Crown corporation inherited its asbestos liability by virtue of the 1989 merger, the bill includes this successor to a successor extension of the January 1, 1972 cutoff date, another provision tailored to fit Crown's corporate history.

The bill itself does not contain any justification or explanation for the narrowly defined class that it protects. Crown has stated in Virginia and Indiana that a major purpose for the bill is to remove the junk or near junk status of Crown's corporate bonds. But, once again, this goal benefits only Crown, nobody else. Moreover, it is more likely that the junk status of Crown's bonds is due to the "highly leveraged" state of the company, apart from any asbestos liabilities. *See Exhibit 7, attached hereto*, Crown 2007 Annual Report, at page 8.

Additionally, Crown's bonds have traded at or near junk level for years; long before it began peddling bills of this sort. *See, e.g., Exhibit 9, attached hereto, Los Angeles Times article, "Now's a Good Time to Buy Corporate Bonds Pros Say", C-4 (Aug. 26, 1999) (reporting in 1999 that "Crown Cork & Seal, the largest food and beverage can maker, sold \$350 million of three-year notes at a yield of 7.21%. The notes are rated "BBB" by Standard & Poor's, one letter grade above junk status.").*

Finally, even assuming that the state of Crown's bond rating is due to asbestos litigation, passing North Dakota House Bill 1430 – or Virginia House Bill 1762 – or Indiana Senate Bill 469 -- when forty other states with more active Crown asbestos litigation dockets have no such legislation – will do nothing to ameliorate Crown's bond rating.

Another supposed purpose for House Bill 1430 – and its Virginia and Indiana twins – albeit another one which appears to benefit Crown alone – is the alleged specter of an impending Chapter 11 bankruptcy. But while Crown’s annual reports bemoan its corporate debt, the fact remains that Crown Holdings’ 2007 Annual Report announces net sales of \$7.7 billion (up from \$6.9 Billion in 2006), with more than 70% of those sales derived from operations outside of the United States. **Exhibit 7, attached hereto, 2007 Annual Report**, at 1. Crown’s annual interest expense on its corporate debt, net of interest income, was \$274 million in 2006 and \$304 million in 2007. *Id.* at 21. Crown itself estimates that “its probable and estimable liability for pending and future asbestos claims and related legal costs is \$201 [million] at the end of 2007.” *Id.* 2007 Annual Report at 54. Thus, Crown’s estimate of its current and future asbestos liability is \$100 million less than just one year of interest on its corporate debt instruments. Further, these estimates have been incorporated into the company’s business through a pre-tax accounting charge, which is not an amount actually paid out in cash in a particular year, but a charge taken to incorporate all payments for current and future cases. *See id.* That is why Crown can declare to the SEC and its shareholders that “resolution [of asbestos-related claims and settlements] is not expected to have a material adverse effect on the Company’s financial position.” *Id.* at 55. As Crown’s public filings demonstrate, a class that by definition includes only Crown is not rationally related to the objective of saving “hard-pressed successors” from bankruptcy. Crown is not on the verge of bankruptcy, and its protests that it is in dire need of rescue by the North Dakota Legislative Assembly are belied by its own public filings.

Ultimately, both the supposed bond rating issue – and the supposed bankruptcy issue – are just proxies for Crown’s veiled threat that if the bill is not passed, its two Virginia plants will

shut down, and the workers at those plants will lose their jobs.<sup>8</sup> But, again, North Dakota House Bill 1430 will have no impact on Crown's bond rating – where litigation is still ongoing in at least forty other jurisdictions, and Crown is not going to go bankrupt due its North Dakota asbestos liability, with Crown's threats to the contrary being nothing more than an attempt to coerce unconstitutional special legislation.

**V. THE BILL RETROACTIVELY IMPAIRS CONTRACTS AND HAS ENORMOUS POTENTIAL FOR UNINTENDED CONSEQUENCES.**

Finally, Crown asks the North Dakota Legislative Assembly to enact House Bill 1430 — and thereby to impair – more than forty (40) years after-the-fact – the original arms-length contractual arrangement negotiated between Mundet and Crown – and to erase the corporate liabilities which Crown knowingly took on – through its purchase of Mundet stock – and its later merger with Mundet,, even while Crown continues, even today, to reap the benefits of that purchase.

Under these bizarre circumstances, it is respectfully submitted that the undisclosed and unforeseen consequences of passing House Bill 1430 will be far reaching, and would likely involve Crown and its insurers, Mundet and its insurers, and Crown's and Mundet's successors, including the successors to Mundet's Thermal Insulation Division.

Corporate liabilities do not simply disappear with a change in corporate form; that is why the purported "innocence" of a particular corporation does not matter. Specific kinds of transactions have certain consequences. The general rule is that when a company buys the shares of another company, or merges or consolidates with another company, the predecessor ceases to exist and is merged into the successor or both cease to exist and are consolidated into a

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<sup>8</sup> In contrast to these circumstances in Virginia – and that in Indiana – states where Crown *does* have manufacturing plants – Crown has absolutely no manufacturing, sales or distribution operations anywhere within the State of North Dakota – and as stated above – neither Crown Holdings, Inc., nor Crown Cork & Seal, are registered or licensed with the Office of the North Dakota Secretary of State to even do business here in North Dakota.

new corporation. Under these circumstances, the successor corporation retains the liabilities of the predecessor. *See, e.g.,* Va. Code Ann. § 13.1-897(4) (“All liabilities of each domestic or foreign corporation or eligible entity that is merged into the survivor are vested in the survivor”); 15 FLETCHER CYCLOPEDIA CORPORATIONS §§ 7121-22 (1999).

All corporations and their attorneys know this. Crown knew this in 1963 – and Crown knew this again in 1966 – when Crown deliberately entered into these contractual arrangements. This is well settled, predictable corporate legal doctrine. And because it is so well-settled and predictable, corporations are able to rely on this law when they decide which course of action to take in an acquisition.

A corporation may choose to buy only the assets of another corporation, and not the liabilities, but that is not what happened here. Crown — a multi-million dollar, multi-national corporation — structured the transaction in which it acquired Mundet — a family owned business sold by the executors of the estate of Joseph Mundet. Crown decided to opt for a stock purchase and merger (instead of another form such as a limited asset purchase) in which it acquired Mundet’s assets *and liabilities*. When Crown sold Mundet’s thermal-insulation assets, by contrast, the buyer expressly assumed only the liabilities arising on or after the date of sale, *see* Exhibit 3, and therefore upon merger, Crown retained those Mundet liabilities that arose before the sale. This is consistent with corporation law of virtually all states – including North Dakota, Virginia, New York, and Pennsylvania that liabilities stay with the surviving company following a merger. *See, N.D.C.C. § 10-19.1-102(2)(e)(1); and The Downtowner, Inc. v. Acrometal Products, Inc.*, 347 N.W.2d 118, 121 (N.D. 1984); Va. Code Ann. § 13.2-897 (4); N.Y. BUS. CORP. LAW § 906; 15 PA. CONS. STAT. § 1929. This is why Crown historically has

not challenged its successor liability for compensatory damages – here in North Dakota – or in any other American jurisdiction.

Moreover, as it pushes for the enactment of state legislation such as North Dakota House Bill 1430 – and Virginia House Bill 1762 and Indiana Senate Bill 469 – Crown avoids the fact that it has benefitted for over 40 years from its stock purchase and subsequent merger with Mundet. It purchased the majority of stock of Mundet, a strong competitor in a desired market, and obtained sought-after operations that reduced its costs. There can be no doubt that Crown benefitted all these years from that transaction. Yet Crown seeks to use changing corporate forms and special legislation to keep the benefits while jettisoning the liabilities at the expense of claimants. The law does not permit that kind of manipulation of the corporate form through special legislation.

The especially troubling thing about this bill is that it is likely to cause confusion and to radically change settled expectations regarding mergers, acquisitions, and assumptions of liability in corporate dealings.

The assumption of liability rules noted above are longstanding, well known rules. This bill will inject a huge exception into those rules that courts and commentators will have to parse. Not only will the constitutionality of this bill be questioned but — but in the unfortunate event that it should be passed - the North Dakota business community will have to determine what implications this bill will have on their future operations and acquisitions.

For example, if one company decides to acquire another company, could it possibly have successor purchased company status under the act? What does this mean in terms of the type of acquisition that the purchasing company should be undertake? What effect will that choice have on the purchasing company's liabilities, form, structure, assets, taxes, etc.? Will this act open the

doors for other similar acts of special legislation that other companies may lobby for to obtain special privileges or immunities? And, if so, will the exceptions ultimately swallow the general rules and completely destroy the current well settled and predictable nature of North Dakota Virginia corporate law?

### **CONCLUSION**

House Bill 1430 is unwise, damaging in far-reaching respects, and it is unconstitutional – for all of the foregoing reasons. This bill has been drafted to benefit only one entity, Crown. If the Legislative Assembly should go so far as to pass House Bill 1430 into law – it shall serve to impair the substantive rights of North Dakota’s hard-working citizens – and it assuredly will upset the settled expectations of North Dakota businesses. House Bill 1430 is neither good for North Dakota business – and its effects, if enacted into law, would be seriously injurious to North Dakota’s citizens.

As such, it is respectfully submitted that House Bill 1430 should either be withdrawn – or it should be given a “do not pass” recommendation by the North Dakota House Judiciary Committee.



*Not a  
exhibits) also  
given to  
Sister.*

ALL STATE LEGAL  
EXHIBIT  
1

AGREEMENT made this 7th day of November, 1963, by and between  
PAULA MUNDET and THOMAS F. BOYLE, co-executors of the Estate of  
Joseph J. Mundet, Deceased ("Executors"), parties of the first part, and  
CROWN CORK & SEAL COMPANY, Inc. ("Crown"), party of the second part.

WITNESSETH:

A. WHEREAS, the Executors, the owners of 16,689 shares of  
the capital stock of Mundet Cork Corporation, desire to sell the said  
shares;

B. WHEREAS, Executors through their duly authorized agent  
Reynolds & Co. of 120 Broadway, New York, has granted to Crown an  
option to purchase said 16,689 shares of capital stock of Mundet Cork  
Corporation, a New York corporation, subject to the terms set forth in  
the option; and

C. WHEREAS, Crown desires to exercise the option upon the  
terms and conditions therein stated, as well as the terms and conditions  
stated hereinbelow;

NOW, THEREFORE, the parties agreeing to be mutually bound  
hereby, for good and adequate consideration now agree as follows:

1. The Executors agree to sell and Crown agrees to buy 16,689  
shares of the capital stock of Mundet Cork Corporation for the price of  
\$4,631,931.82 (i.e. at the price of \$277.544 per share).

DEPOSITION  
EXHIBIT #2  
1/10/64  
1/10/64

EXHIBIT  
"A"

001

4. The closing shall be held at the offices of Reynolds & Co., 120 Broadway, New York, New York at 11:00 A.M., November 14, 1963. At such closing the Executors will deliver to Crown 16,689 shares of the capital stock of Mundet Cork Corporation, duly endorsed for transfer in such form as to permit a valid transfer to Crown, and with all necessary tax stamps affixed. At the closing, and upon delivery of the stock certificates as aforesaid, Crown will deliver to the Executors or the persons named below, as the case may be, certified or bank checks drawn on New York funds, as follows:

(a) To Reynolds & Co. or order for their commissions in this transaction,

(b) To Chase Manhattan Bank or order an amount which will pay the principal and interest of the Estate's indebtedness to such bank,

(c) To Hudson Trust Company or order an amount which will pay the principal and interest of the Estate's indebtedness to such bank,

(d) To Paula Mundet and Thomas F. Boyle, co-executors of the Estate of Joseph J. Mundet, or order, for the balance of the purchase price.

5. Crown will make offers to the holders of the remaining 7,091 outstanding shares of Mundet Cork Corporation to purchase such shares and pay the sum of \$277,544 for each such share of Mundet stock as may be delivered by such other stockholders with duly endorsed stock


certificates and with all necessary tax stamps affixed to Reynolds & Co. at its offices at 120 Broadway, New York, New York within thirty (30) days after closing hereunder; and shall thereafter distribute such purchase money to such other stockholders upon their delivering their certificates as above described to Reynolds & Co.

6. This agreement constitutes the entire agreement between the parties. No party hereto has made any representation to any other party hereto which is not contained herein.

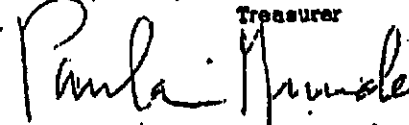
IN WITNESS WHEREOF, the parties hereto have interchangeably set their hands and seals, the day and year first above written.

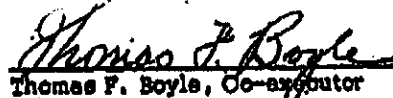
Attest:

CROWN CORK & SEAL COMPANY, INC.

  
Harry R. Warren, Secretary

  
Gordon W. Blair, Vice President and  
Treasurer

  
Paula Mundet, Co-executor

  
Thomas F. Boyle, Co-executor

6853

JAN 10 1984

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO AND AUSTIN DIVISIONS

ARTY A. HAWKINS, ET. UX. I  
VS. I  
FIBREBOARD CORPORATION, I  
ET. AL. I

CCS

DEPOSITION OF  
E.J. STANSBURY

COPY

taken on the 16th day of December, 1983, in the offices  
of Mr. Richard Mithoff, 3450 One Allen Center,  
Houston, Harris County, Texas, between the hours of  
1:40 p.m. and 3:40 p.m., pursuant to the Federal  
Rules of Civil Procedure.

1 A I went to work for Mundet Cork Corporation in  
2 1945..  
3 Q What was your first position with Mundet  
4 Corporation?  
5 A Estimator and sales engineer.  
6 Q Where did you go to work for them?  
7 A Houston, Texas..  
8 Q Where is Mundet or was Mundet Corporation based  
9 at that time?  
10 A Based at North Bergen, New Jersey..  
11 Q And what was the primary business of Mundet  
12 Cork Corporation?  
13 A At that time, they sold corks of all types,  
14 pipe covering, boards for coal storage, bottle  
15 caps, gaskets, and that was the primary or the  
16 sole manufacturing of that company.  
17 Q And that was a manufacturing operation you're  
18 discussing?  
19 A That's right, and that was a contracting  
20 organization, too.  
21 Q Where were the different contracting divisions  
22 of Mundet Cork located?  
23 A New York, Atlanta, Jacksonville..  
24 Q Jacksonville, Florida?  
25 A Florida. Houston, Los Angeles, San Francisco,

1 A Yes, sir.

2 Q Could you describe for us briefly what insulation  
3 products were, in fact, manufactured by  
4 Mundet Cork Company?

5 MR. HARMON: I object unless you  
6 point out in what time at  
7 this point you are talking  
8 about.

9 BY MR. BUDD:

10 Q When you first started working for the company  
11 all the way through until you stopped working  
12 for the company, and if you could, just describe  
13 for me what insulation products were manufactured  
14 by Mundet Cork Company?

15 A After I had been with the company quite a few  
16 years, it started managing magnesia.

17 Q You say magnesia?

18 A Pipe covering board and cement.

19 Q Can you --

20 A 85 percent magnesia.

21 Q Now, you described 85 percent magnesia as a  
22 pipe covering. When was that first produced?

23 A Early 60's, right in '60. It's hard to remember  
24 dates. You realize I have no information to  
25 deal with here with me, and I am trying to speak

1 from memory; and we are talking twenty-something  
2 years, thirty years ago.

3 I'm talking about 85 percent magnesia and  
4 not the calcium silicate product or anything of  
5 that nature.

6 Q Let's talk about that. The 85 percent magnesia  
7 insulation, do you know when that was first  
8 produced?

9 A I'd say in the early 60's.

10 Q What about the 85 percent magnesia cement  
11 products?

12 A About the same time because it was waste product  
13 of the base material.

14 Q And what about the 85 percent magnesia board that  
15 you described?

16 A That was all in the same area. That's all made  
17 together.

18 Q Were there any other insulation products that were  
19 manufactured by Mundat Cork Company at any other  
20 time?

21 A Not other than the ones I mentioned a while ago,  
22 no, sir.

23 Q What about the calcium silicate?

24 A At that date.

25 Q And what date would that have been?

1 A Later 60's. I'm talking about after '65, some-  
2 where in there; '64, somewhere in there.

3 Q And that is Mundet Cork Company?

4 A Mundet Cork.

5 Q Okay.

6 A Thermosel.

7 Q You said, Thermosel?

8 MR. HARMON: Is Thermosel  
9 your product you described?

10 THE WITNESS: When the cal-sil's  
11 came out, magnesia went out.  
12 They use the same process, the  
13 same kiln. They had one  
14 kiln, two kilns, at the most.

15 BY MR. BUDD:

16 Q I'll ask you to describe this. I'll hand you  
17 what's going to be marked as Plaintiffs' Exhibit  
18 No. 1.

19 MR. BUDD: We will give the  
20 court reporter a minute for  
21 that.

22 (The instrument referred to was  
23 marked Plaintiffs' Exhibit No. 1  
24 for identification and is  
25 attached hereto.)



1 BY MR. BUDD:

2 Q I'll hand you what's been marked as Plaintiffs'  
3 Exhibit 1 and ask if you can identify what's  
4 numbered there in the picture, numbered KN-8?

5 A That's magnesia cement.

6 Q And is that the Mundet Cork magnesia product  
7 that you described earlier?

8 A It could be, yes. I was in the contracting end,  
9 in the manufacturing end; and with private  
10 label deals, you couldn't tell what it was you  
11 were getting. This was our bag that we used,  
12 yes, sir.

13 Q And by, "we," you mean Mundet Cork?

14 A Mundet Cork.

15 Q And inside that bag was 85 percent magnesia  
16 cement?

17 A Correct.

18 Q When do you remember seeing that packaging?

19 A It was either early 60's or late 50's. It was  
20 early 60's, I'm sure it was.

21 Q Now, I'll ask you to describe what's numbered on  
22 there as KN-9 in the right-hand corner of  
23 Plaintiffs' Exhibit 1 or Stansbury 1.

24 A That looks like -- I can't tell by looking at  
25 the corner, but that looks like magnesia pipe

1 here, those two mineral wools are private labels,  
2 these two cements, six and seven.  
3 Q Those are from the products pictures on  
4 Stansbury 1?  
5 A Because we have mineral wool plants.  
6 Q Was there any private labeling done of asbestos-  
7 containing products?  
8 A I couldn't tell you. I was not in the manufactur-  
9 ing; and to give you an answer, I couldn't tell  
10 you. I was not -- I was in the contract basis,  
11 and all of that was done at North Bergen and at  
12 the home office.  
13 And how much of it was done, I know there  
14 was some; but I don't know how much and what  
15 extent it was.  
16 Q Was there any asbestos in any other products,  
17 insulation products that you described?  
18 A These?  
19 Q Yes.  
20 A Yes.  
21 Q Which products contained asbestos?  
22 A 85 percent mag.  
23 Q And would that include the 85 percent magnesia  
24 pipe covering?  
25 A Yes, sir.

1 Q And the cement?

2 A Yes.

3 Q And the block?

4 A Yes.

5 Q Would this also be true, would there also be

6 asbestos in the calcium silicate products that

7 you described?

8 A It would be less.

9 Q Now, did the employees of Mundet Cork Company,

10 employees of the contracting division that you

11 described, work with Mundet Cork products?

12 A Didn't quite -- did what?

13 Q Did the employees of Mundet Cork Company for the

14 contracting division use Mundet Cork product--

15 MR. HARMON: I object to the

16 form of the question because

17 it didn't say he was making

18 a product out of cork.

19 A That was what I was getting at. Yes, we use --

20 BY MR. BUDD:

21 Q I will rephrase it.

22 A Okay.

23 Q Did employees of the Mundet Cork contracting

24 division use Mundet Cork insulation products?

25 A Yes.

1           you applied the two pieces onto the pipe and  
2           wired it.

3   Q       Would these products ever need to be cut?

4   A       Yes.

5   Q       How would they be cut?

6   A       With a saw.

7   Q       Circular saw, electric saw?

8   A       Depend on the size of the job, and, you know,  
9           whether it would warrant having a circular saw  
10          on the job. Most of the time we were mostly  
11          small contractors in the commercial end. We  
12          usually used hand saws.

13   Q       What about the calcium silicate products, would  
14          that also --

15   A       Same way.

16   Q       Would that require cutting?

17   A       Yes, sir.

18   Q       When we say, "hot insulation work," what type  
19          of job sites are you talking about with that?  
20          What type of job sites, can you give us some  
21          examples?

22   A       Buildings like this one here.

23   Q       Office buildings?

24   A       Office buildings.

25   Q       Where would it be applied in office buildings?

1 A On all the pipe and/or equipment like schools,  
2 hospitals, just commercial buildings.

3 Q Did contracting divisions ever handle any  
4 industrial jobs?

5 A Yes, sir.

6 Q Can you describe some of those for us, what  
7 type of industrial jobs would that be?

8 A We handled Monsanto, mostly. That was the one  
9 we handled longer.

10 And through the years, however, we used  
11 not too much Monsanto materials because they had  
12 some kind of rust particles. We did use some,  
13 but most of the time we bought Corning materials  
14 for bigger jobs. And many times, we used some  
15 of ours and we worked out of their warehouse a  
16 lot.

17 Q Now, when was the San Antonio contracting division  
18 opened?

19 A In the 50's, somewhere in the early 50's,  
20 somewhere in there.

21 Q Were there 85 percent magnesia products made by  
22 Mundet being used when the San Antonio operation  
23 opened up?

24 A Very little.

25 Q Were there some?

1 MR. HARMON: I will sustain that.

2 MR. WEBER: You don't want to  
3 ask him the real crucial issue  
4 then we have objections.

5 BY MR. BUDD:

6 Q Mr. Stansbury, how long --

7 A Are you-all through?

8 Q How long did you continue working for Mundet  
9 Cork Company?

10 A I worked with Mundet from 1945 until they sold  
11 their company.

12 Q Who did they sell the company to?

13 A Crown Cork and Seal.

14 Q Now, when Mundet sold to Crown Cork and Seal,  
15 did Mundet employees, that you know of, go to  
16 work for Crown Cork and Seal?

17 A Yes.

18 Q And did Crown Cork and Seal continue to sell  
19 Mundet Cork inventory?

20 A Inventory?

21 Q Yes.

22 A Yes, for a period of about three months. They  
23 only owned it for about three months.

24 Q And would this inventory include 85 percent  
25 magnesia products?

1 A

Yes.

2 Q

And did Crown Cork and Seal continue contracting insulation after the purchase of Mundet Cork Company?

5 A

Yes.

6 Q

And did Crown Cork and Seal continue with the same warehouses and same offices that were previously occupied by Mundet Cork Company?

9 A

Yes.

10 Q

Did Crown Cork and Seal continue using products and filling orders of products with the Mundet name on them?

13 A

Yes.

14 Q

And did you, as an employee, continue with the same employee benefits that you had with the Mundet Cork Company?

17 A

Yes.

18 Q

Did the 85 percent magnesia products that you have described for us today that were manufactured and distributed by Mundet Cork Company contain asbestos during the entire period, that you know of, that you worked for Mundet Cork?

23 A

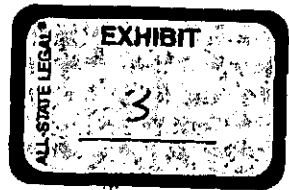
Yes.

24

MR. BUDD: I think that's all

25

I have.



BILL OF SALE AND ASSIGNMENT

For value received and intending to be legally bound, MUNDET CORK CORPORATION, a New York corporation, located at 7101 Tonnelle Avenue, North Bergen, New Jersey (hereinafter referred to as "SELLER"), a Division of Crown Cork & Seal Company, Inc., a New York corporation, located at 9300 Ashton Road, Philadelphia 36, Pennsylvania, hereby sells, assigns, grants, conveys, transfers and sets over to BALDWIN-BHRET-HILL, INC., a Pennsylvania corporation, located at 500 Breunig Avenue, Trenton, New Jersey (hereinafter referred to as "BUYER"), the following assets, goods, chattels and rights of Seller's Thermal Insulation Contract Division:

- 1) Seller's inventory of finished goods and work in process at Seller's manufacturing cost or contract cost, less 15%, whichever is lower, all in the quantities and at the locations specified in Schedule 1, attached hereto and made a part hereof by reference;
- 2) Seller's contracts in progress, based upon costs from February 1, 1964 to February 8, 1964, as specified in Schedule 2, attached hereto and made a part hereof by reference;
- 3) Seller's contracts in progress upon which no progress billing have been made, based on costs from inception to January 31, 1964, as specified in Schedule 3, attached hereto and made a part hereof by reference;
- 4) Seller's inventory of raw materials and useable purchased materials at Seller's purchase price, all in the quantities and at the locations specified in Schedule 4, attached hereto and made a part hereof by reference.



007



5) All accounts receivable specified in Schedule 5, attached hereto and made a part hereof by reference, ~~based upon 37-1/2% of unpaid balance;~~

6) All of the office furniture, fixtures, equipment and small tools located in the branch offices of Seller, identified in Schedule 6, attached hereto and made a part hereof by reference;

7) Any and all rents and/or deposits on Leases as identified in Schedule 7, attached hereto and made a part hereof by reference;

8) The items of machinery and equipment located at Seller's North Bergen, New Jersey plant, as specified in Schedule 8, attached hereto and made a part hereof by reference;

9) All of Seller's right, title and interest in all Thermal Insulation Contracts and 6 Performance Bonds, identified and specified in Schedule 9, attached hereto and made a part hereof by reference;

The parties have executed a master contract and bond assignment form and agree that reproductions of such form with individual contract numbers and names inserted shall be attached to each individual contract and shall be considered as an original executed assignment.

The contract files shall be physically delivered to Buyer at a time and place designated by mutual agreement of the parties.

10) All of Seller's right, title and interest in the Branch Manager Contracts in effect, identified and specified in Schedule 10, attached hereto and made a part hereof by reference;

The time and place of physical delivery of said contracts shall be agreed to by the parties.

11) All of Seller's right, title and interest in the Branch Offices and Warehouses leased by Seller and assigned to Buyer under separate and individual Assignments, identified and specified in Schedule 11, attached hereto and made a part hereof by reference;

12) All of Seller's right, title and interest in three (3) Vehicle Leases, identified and specified in Schedule 12, attached hereto and made a part hereof by reference.

To have and to hold the assets and rights hereby transferred and assigned or intended to be transferred and assigned unto the Buyer, forever.

Upon receipt of written notice from Buyer, within one year from February 28, 1964, Seller will execute and deliver to Buyer such documents as shall be necessary to grant to Buyer a perpetual, royalty-free, exclusive world-wide license for the use, in connection with the manufacture, distribution and installation of thermal insulation, of such of Seller's present trade names and trademarks as are specified in that notice.

Seller appoints Buyer its true and lawful attorney, with full power of substitution, to demand, receive and collect all moneys, claims or rights due or to become due from the assets and rights hereby sold, assigned and transferred, and to give receipts and releases with respect thereto, and to institute any necessary proceedings to collect or enforce any such moneys, claims or rights.

Seller agrees to execute and deliver to Buyer all such further in-

struments of assignment or other documents, and to take all such other action as may be necessary or, in Buyer's opinion, desirable to fully convey and assign to Buyer title to all the assets and rights hereby sold, assigned and transferred or intended so to be.

Seller represents and warrants that Seller has and hereby conveys to Buyer good and marketable title to the assets and rights recited herein and on the schedules attached hereto, free and clear of all liens, charges, claims and encumbrances of any nature whatsoever.

Seller represents and warrants to Buyer that the amounts listed on Schedule 5 hereto are due and owing in full to the Seller on the date hereof, and are not subject to any deduction, defense, set-off, or counterclaim of any nature whatsoever.

Pursuant to Paragraph 5, page 2 herein and Schedule 5, sums of money collected through February 24, 1964 are hereby deducted from the total receivables referred to in Paragraph 5, page 2 and Schedule 5. Collections applicable to these receivables and other monies collected, owing to Buyer after February 24, 1964, will be remitted daily by Seller to Buyer.

In the event of any sales, transfer or similar taxes incurred with respect to this Bill of Sale or any Assignments thereunder, or any future Assignments necessary to be made to Buyer by Seller, such taxes shall be divided equally between Buyer and Seller.

Seller covenants that for five (5) years after February 28, 1964, it will not engage in the production of calcium silicate or magnesia at its North Bergen, New Jersey plant, or sell such plant to another company for the production of such products, and Seller will not engage in the Thermal Insulation Contract business for such period of time.

This Bill of Sale, conveyance and Assignment and the covenants herein contained shall inure to the benefit of, and shall bind, the respective parties hereto and their respective legal representatives, successors and assigns.

IN WITNESS WHEREOF, the Seller has caused this instrument to be executed by its duly authorized executive officers and its corporate seal affixed by its Assistant Secretary as of the 8th day of February, 1964.

MUNDET CORK CORPORATION, a Division  
of Crown Cork & Seal Company, Inc.

By John J. Connelley  
Ch. Sec. President

Attest:

Harry R. Warren  
Harry R. Warren - Asst. Secretary

STATE OF PENNSYLVANIA :  
COUNTY OF PHILADELPHIA : SS.

On this, the 8th day of February, 1964, before me the undersigned, a Notary Public, personally appeared John J. Connelley who acknowledged himself to be Ch. Sec. Board of Mundet Cork Corporation, a New York corporation; and that he as such Ch. Sec. Board, being authorized to do so, executed the foregoing BILL OF SALE AND ASSIGNMENT for the purposes therein contained by signing the name of the corporation by himself as

Witness my hand and notarial seal.

Shirley Fox  
Notary Public  
SHIRLEY FOX, Notary Public  
Philadelphia, Pennsylvania  
My Commission Expires February 12, 1967

ASSUMPTION

For value received and intending to be legally bound, Buyer for itself, its successors and assigns, hereby assumes all liabilities and obligations of the Seller arising from and after February 8, 1964, under the Lease Contracts and Performance Bonds, identified and Specified on Schedules 9, 10, 11 and 12, attached to the foregoing Bill of Sale and Assignment.

BALDWIN-EHRET-HILL, INC.

By

President

Attest:

Secretary

STATE OF *Pa.*  
COUNTY OF *Phila.*

On this, the *20<sup>th</sup>* day of February, 1964, before me, the undersigned, a Notary Public, personally appeared *E. R. Stevens* who acknowledged himself to be *President* of Baldwin-Ehret-Hill, Inc., a Pennsylvania corporation; and that he as such *President*, being authorized to do so, executed the foregoing Assumption for the purposes therein contained by signing the name of the corporation by himself as

Witness my hand and notarial seal.

*Shirley Fox*  
Notary Public  
SHIRLEY FOX, Notary Public  
Philadelphia, Philadelphia County  
My Commission Expires February 13, 1967

**CLOSING STATEMENT**  
(Cut-Off Date - February 8, 1964)

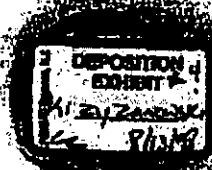
**SELLER:** Mundet Cork Corporation, A  
Division of Crown Cork &  
Seal Company, Inc.  
9300 Ashton Road  
Philadelphia 36, Penna.

**BUYER:** Baldwin-Zhret-Hill, Inc.  
500 Breunig Avenue  
Tranton, New Jersey

	DUE SELLER	DUE BUYER
<b>BASIC PURCHASE PRICE</b> Including plant machinery and equipment, trade names, trademarks, and negative covenants)	\$ 500,000.00	
<b><u>INVENTORIES:</u></b>		
<b><u>Schedule 1</u></b> Finished goods - work in process - Seller's manufacturing cost or contract cost, less 15%, whichever is lower	317,198.45	
<b><u>Schedule 2</u></b> Costs on contracts in progress From 2/1 to 2/8/64	205,724.78	
<b><u>Schedule 3</u></b> Costs on contracts in progress From inception to 1/31/64 (no progress billing made)	61,409.92	
<b><u>Schedule 4</u></b> Raw materials and useable purchased materials at Seller's purchase price	522,622.05	
<b><u>ACCOUNTS RECEIVABLE:</u></b>		
<b><u>Schedule 5</u></b> Less payments 2/9 to 2/24/64	1,924,657.21	\$ 295,153.64
<b><u>Schedule 6</u></b> <b><u>BRANCH OFFICE EQUIPMENT,</u></b> <b><u>FURNITURE, FIXTURES &amp; SMALL TOOLS:</u></b>	35,600.00	
<b><u>Schedule 7</u></b> <b><u>PRORATION OF FEBRUARY RENT</u></b> <b><u>AND DEPOSITS ON LEASES:</u></b>	8,760.02	
<b>TOTALS</b>	\$3,576,972.43	\$ 295,153.64
Less: Amount due Buyer	295,153.64	
<b>NET AMOUNT DUE SELLER</b>	\$3,281,818.79	

EXHIBIT

"D"



542751- CERTIFICATE OF MERGER

OF  
MUNDET CORK CORPORATION

INTO

CROWN CORK & SEAL COMPANY, INC.

UNDER SECTION 905 OF THE BUSINESS CORPORATION LAW

CROWN CORK & SEAL COMPANY, INC., a domestic corporation duly organized and existing under and by virtue of the laws of the State of New York, said CROWN CORK & SEAL COMPANY, INC. owning at least ninety-five per cent of the outstanding shares of each class of MUNDET CORK CORPORATION, another domestic corporation duly organized and existing under and by virtue of the laws of the State of New York, does hereby certify and set forth:

1. The name of the subsidiary corporation to be merged is MUNDET CORK CORPORATION.

2. The name of the surviving corporation is CROWN CORK & SEAL COMPANY, INC.

3. The designation and number of outstanding shares of each class of MUNDET CORK CORPORATION and the number of such shares of each class owned by CROWN CORK & SEAL COMPANY, INC. is as follows:

Designation of Outstanding Shares	Number of Outstanding Shares	Number of Outstanding Shares Owned by Surviving Corporation
-----------------------------------	------------------------------	---

Single class of Capital Stock		
-------------------------------	--	--

Par Value \$100 per share	23,780	23,645
---------------------------	--------	--------

2(a). The Board of Directors of CROWN CORK & SEAL COMPANY, INC. has adopted a plan of merger of MUNDET CORK CORPORATION into CROWN CORK & SEAL COMPANY, INC.



1. MUNDET CORK CORPORATION survived as a result of a consolidation under Section 86 of the New York Stock Corporation Law between L. Mundet & Son and Mundet Cork Corp.

The certificate of incorporation of L. Mundet & Son was filed in the office of the Secretary of State of New York on January 7, 1908. The certificate of incorporation of Mundet Cork Corp. was filed in the office of the Secretary of State of New York on October 2, 1930. The certificate of consolidation of L. Mundet & Son and Mundet Cork Corp. into MUNDET CORK CORPORATION was filed in the office of the Secretary of State of New York on November 1, 1937.

5. The date when the certificate of incorporation of CROWN CORK & SEAL COMPANY, INC. was filed by the Department of State is the 19th day of December, 1927.

6. A copy of the plan of merger of MUNDET CORK CORPORATION into CROWN CORK & SEAL COMPANY, INC. was given to all the holders of shares of MUNDET CORK CORPORATION not owned by the surviving corporation, CROWN CORK & SEAL COMPANY, INC. on the 27th day of December, 1965.

IN WITNESS WHEREOF, the undersigned have executed and signed this certificate this 4th day of January, 1966.

WITNESS:

*James H. O'Reilly*

CROWN CORK & SEAL COMPANY, INC.

By *John G. O'Reilly*  
Chairman of Board

*Paul H. O'Reilly*

By *Gordon W. Blatz*  
Vice President

*Harry J. Faus*

By *Harry J. Faus*  
Secretary

VERIFICATION

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF PHILADELPHIA

John F. Connelly,                      Gordon W. Blum  
and Henry S. Faus,                      being first duly sworn, depose  
and say that they are Ch. of the Board                      Vice President  
and Secretary                      respectively, of Crown Cork & Seal  
Company, Inc., that they have read the foregoing certificate  
and know the contents thereof and that the statements therein  
contained are true.

*John F. Connelly*  
John F. Connelly, Chairman of the Board  
*Gordon W. Blum*  
Gordon W. Blum, Vice President  
*Henry S. Faus*  
Henry S. Faus, Secretary

SWORN TO AND SUBSCRIBED  
before me this 1st day  
of January, 1966.

*Shirley J. Hill*  
Notary Public  
My commission expires 2-15-67

COMMONWEALTH OF PENNSYLVANIA:

COUNTY OF PHILADELPHIA

On the 4th day of January, 1966, before  
me personally came Henry S. Faus, to me known,  
who being by me duly sworn, did depose and say that he  
resides at 1100 Gilbert Road, Meadowbrook, Pa.  
that he is the Secretary of Crown Cork  
& Seal Company, Inc., the corporation described in and which  
executed the attached instrument; that he knows the seal  
of said corporation; that the seal affixed to said instru-  
ment is such corporate seal; that it was so affixed by  
order of the board of directors of said corporation; and  
that he signed his name thereto by like order.

*Henry S. Faus*  
Notary Public  
My commission expires 2-13-67

996101 0340  
JAN 10 1966  
FBI - NEW YORK

CERTIFICATE OF INCORPORATION OF  
BOAN CORPORATION, INC.  
CORP. & SELL COMPANY, INC.  
UNDER SECTION 905 OF THE  
BUSINESS CORPORATION LAW

SHARPLEY, STANLEY C., BOOK  
BINDER & PAPERMAN  
ATTORNEY AT LAW  
204 BOSTON QUINCY STREET  
PHILADELPHIA, PA. 19102.

*[Handwritten signature]*



15 of 18 DOCUMENTS

**Crown Cork and Seal, Inc. v. Aetna Casualty and Surety Company**

**September term, 1978, no. 1292**

**COMMON PLEAS COURT OF PHILADELPHIA COUNTY, PENNSYLVANIA**

**1980 Pa. Dist. & Cnty. Dec. LEXIS 248; 16 Pa. D. & C.3d 525**

**October 9, 1980, Decided**

**COUNSEL:** [\*1] *Robert R. Reeder*, for plaintiff.

*Dean F. Murtagh, Richard M. Shusterman, Richard K. Masterson and Robert M. Britton*, for defendant.

**JUDGES:** PRATTIS, J.

**OPINION BY:** PRATTIS, J.

**OPINION**

[\*\*525] Preliminary objections to complaint.

PRATTIS, J., October 9, 1980 -- Crown Cork and Seal, a New York corporation with major offices in Philadelphia and plants in diverse sections of the [\*\*526] United States, brought the instant petition for declaratory judgment in this court to seek a ruling on its rights under certain contracts of insurance entered into at diverse times with defendants Aetna Casualty and Surety Company, Insurance Company of North America, Employer's Mutual Liability Insurance Company, Continental Insurance Company and Lumbermen's Mutual Casualty Company.

During part of its corporate history, Crown Cork and Seal owned the Mundet Cork Corporation, which included the Thermal Insulation-Contract Division, a manufacturer of products containing asbestos.

Beginning in the fall of 1976 petitioner was named as defendant in a series of personal injuries actions in courts of diverse locations throughout the United States. These actions sought compensation

for personal [\*2] injuries to the claimants therein arising from their work with asbestos products. It is uncontradicted that the claimants in question came in contact with products manufactured by petitioner or subsidiary corporations of petitioner, which products contained asbestos. Claimants claimed the asbestos caused their injuries.

At the time this petition was filed, 91 such cases had been filed against petitioner throughout the United States. At the time this case was argued in July, 1980, 650 cases had been filed against petitioner. Petitioner claims that all of these cases arise because of its ownership of Mundet Corporation and its Thermal Insulation Division:

Aetna Casualty & Surety Company was the primary liability insurance carrier for Mundet for the years 1950 through July 1, 1960. Aetna Casualty & Surety Company was the primary liability [\*\*527] insurance company for Crown Cork and Seal for the years July 1, 1960 through May 1, 1966. The Insurance Company of North America was the primary liability and excess carrier for Crown Cork and Seal for the period of May 1, 1966 to May 1, 1970. Employer's Mutual Liability Insurance was the primary liability excess carrier for Crown Cork [\*3] and Seal for the period of May 1, 1970 through May 1, 1974. Continental Insurance Company was the primary carrier for Crown Cork and Seal from May 1, 1974 to July 1, 1976, with excess insurance being carried by Lumbermen's Mutual Casualty Company. From July 1, 1976 to the present, petitioner has been self-insured.

Crown Cork and Seal alleges that prior to the filing of the petition for declaratory judgment, it had spent \$ 75,000 in the settlement of claims, as hereinbefore discussed, and \$ 15,000 in the defense of such claims. Crown Cork and Seal had sought to have *defendants* defend the claims and pay the settlement or verdict, if any, but in each case, where such defense and indemnity was sought, it was denied.

The crux of the present case, as in almost all of the other "asbestos cases" turns on the resolution of the question of whether the thousands of sufferers who have endured physical deterioration and death from exposure to asbestos were individuals who had suffered "accidents" within the meanings of the insurance policies carried by various manufacturers and distributors of asbestos products. Whether there had been an "accident" has been construed to depend on whether [\*4] claimant manifested symptoms of the physical deterioration during the policy period or whether the claimant had been exposed to the injury causing substance during [\*\*528] the policy period. In the former instance, carriers on the risk during the frequently many years that it takes for the physical deterioration to manifest itself can successfully avoid defending and paying. In the latter instance, the various insurance companies on the risk throughout the period of exposure to the endangering substance can each be said to have a proportionate share of responsibility for the defense and indemnification. Thus, insurance companies invariably argue for the "manifestation theory," and the claimants invariably argue for the "exposure theory." It is unnecessary at the state of this litigation to elect one theory or the other since the only issue before the court is whether the preliminary objections filed by Aetna Casualty and Surety Company can prevail.

In the preliminary objections, Aetna Casualty and Surety Company argues that the petition for declaratory judgment fails to attach the complaints that claimant has filed against petitioner and consequently determination of coverage [\*5] cannot be made absent such complaint, that the petition does not set forth sufficient facts to enable Aetna to defend coverage as to each claimant's claim and finally that this court is without jurisdiction to decide the declaratory judgment petition absent the joinder

of the individual claimant's actions against petitioner.

#### DISCUSSION

The Declaratory Judgments Act, 42 Pa.C.S.A. § 7532, provides: "Courts of record within their respective jurisdictions, shall have power to declare rights, status, and other legal relations. . . ."

Section 7533 of that act provides further:

"Any person interested under a deed, will, written [\*\*529] contract, or other writings constituting a contract . . . may have determined any question of construction or validity arising under the instrument . . . contract . . . and obtain a declaration of rights, status or . . . legal relations thereunder."

The Supreme Court of Pennsylvania has held that the declaratory judgment device is an appropriate means for resolving controversies relating to the extent of coverage under a policy of insurance. This is so whether the petition is brought by the insured after a denial of coverage by the insurer, *Friestad v. Travelers Indemnity Co.*, 452 Pa. 417, 306 A. 2d 295 (1973), [\*6] or by the insurer seeking to determine the extent of his obligation to the insured: *Liberty Mutual Insurance Co. v. S.G.S. Co.*, 456 Pa. 94, 318 A. 2d 906 (1974). The court clearly endorsed the declaratory judgment as a viable means of resolving such controversies even when alternative forms of action are available and even when a dispute as to the facts exists, making the declaratory judgment something more than the mere construction of a written document.

What is essential for determination and what the petitioner seeks in a declaratory judgment are answers to the questions relative to specific written policies. Was there a contract of insurance? What risk is insured against? Are the claimants individuals who have been subjected to that risk? All these are questions which can be answered in a declaratory judgment proceeding.

In the present case, the extent of the underlying litigation is undisputed. The resources of defendant and plaintiff are more than ample to collect and disseminate whatever information is required for the adjudication of specific claims. If dates, medical reports, identity of parties, identity of companies, [\*\*530] beneficiaries and the like [\*7] are significant issues, discovery is available.

The more difficult question is whether, having resolved these questions, an action for declaratory judgment can subsist where, as here, the injured persons whose claims have been asserted against the insured, have not been joined in a declaratory judgment proceeding between the insured and his putative insurers. The leading Pennsylvania cases seem to suggest a negative answer. Thus, in *Keystone Insurance Co. v. Warehousing and Equipment Corporation*, 402 Pa. 318, 165 A. 2d 608 (1960), the court held that an injured party who had secured a default judgment against an insured was a necessary party in a declaratory judgment action brought by the insurer to deny coverage to the insured. Similarly, in *Ins. Co. of State of Pa. v. Lumbermens Mutual Casualty Co.*, 405 Pa. 613, 177 A. 2d 94 (1962), the court held the insured and the claimant were necessary parties to a declaratory judgment action brought by one insurer for concurrent coverage from another. Both plaintiff and defendant in that declaratory judgment action had issued policies to the insured covering the time of the accident. As Mr. Chief Justice Jones pointed [\*8] out in his concurring opinion in *Keystone Ins. Co. v. Warehousing and Equipment Corporation*, *supra*, what was sought in these cases was the specific termination of the rights of a third party beneficiary of the insurance contract. In both *Keystone* and *INA v. Lumbermens*, *supra*, the insurance company was seeking a declaration with reference to coverage of a single incident.

Clearly these principles are reflected in the recently enacted Declaratory Judgments Act, 42 Pa.C.S.A. § 7531 *et seq.*, with the proviso in section 7540(a) that: "When declaratory relief is sought, all [\*\*531] persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding. . . ." However, none of the prior Pennsylvania cases, now codified in section 7540(a), dealt with the use of the declaratory judgment process as applied to a real controversy between the insured and the insurer where the class of claimants is indefinite and to some extent even unknown. Thus, in *Reifsnyder v. Pittsburgh Outdoor Advertising Co.*, 396 Pa. 320, 152 A. 2d 894 (1959), cited with [\*9] approval in *INA v. Lumbermens*, *supra*, the court held that failure to join known minority shareholders prevented jurisdiction in equity because their "rights are so

connected with the claims of the litigants that no decree can be made between them without impairing those rights." Similarly, in *Gardner v. Allegheny County*, 382 Pa. 88, 114 A. 2d 491 (1955), the parties alleged to be indispensable were the several Federal agencies that minutely regulated the defendant county airport and in *Gavigan v. Bookbinders, Machine Operators and Auxiliary Workers Local Union No. 97*, 394 Pa. 400, 147 A. 2d 147 (1959), a seniority dispute involved construction of an employment contract to which the employer was indispensable in litigation as in fact. '

\* Significantly, in *Friestad v. Travelers*, *supra*, the failure to join a known claimant -- which had in fact asked leave to intervene -- was not considered as an impediment to the exercise of jurisdiction.

In view of the court's holding in [\*10] *Friestad* and *Liberty Mutual Insurance Co. v. S.G.S.*, to deny the use of the declaratory judgment in the present case would be to deny its applicability in the circumstance [\*\*532] where it is most useful. If an insured has a real controversy for adjudication when there is one claim outstanding, how much more does he have a real controversy when faced with 600 claims. When the controversy is framed by the litigants as: Does "X" have rights under the contract of insurance between insured "A" and insurer "B," obviously there is a case and a controversy [and "X" is an indispensable party]. But when insured "A" sues insurer "B" to determine whether "A" or "B" must bear the cost of defending against 600 X's and to determine whether a single contract of insurance was written to cover the risk of loss to 600, or 700 or 1,000 X's that too presents a distinct case and controversy -- between "A" and "B." The fact that every "X" is not present or, more likely, not known does not divest the court of jurisdiction.

A comparable problem is presented to the courts in class actions. There, the fact that *all* potential members of the class do not opt in does not prevent a binding adjudication [\*11] as to those who do. Both class actions and declaratory judgment actions are designed to facilitate the resolution of numerous controversies through the litigation of one basic controversy. There is obvious merit in such a process even though *all* potential litigants are not present or bound. Hence, in the present case, an

1980 Pa. Dist. & Cnty. Dec. LEXIS 248, \*; 16 Pa. D. & C.3d 525, \*\*

adjudication of the coverage controversy should at least prevent the present parties from relitigating that issue 650 times.

Accordingly, the preliminary objections of defendant Aetna Casualty and Surety Company should be overruled.





IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CROWN, CORK & SEAL COMPANY, : CIVIL ACTION  
INC. :  
 :  
 :  
 v. :  
 :  
 :  
 EMPLOYERS INSURANCE OF WAUSAU : NO. 99-4904

MEMORANDUM ORDER

This case arises from a March 1985 settlement agreement (the "Agreement") between plaintiff and its insurers, including defendant, regarding each insurer's primary and excess coverage of plaintiff's asbestos claim liabilities. The Agreement sets up a two-tiered structure for disbursement of funds to plaintiff, under which each insurer compensates plaintiff for settlement or judgment costs ("indemnity costs") and defense and other administrative costs. After each primary insurer's contributions has reached a certain level (the "aggregate limit"), that insurer is discharged from further responsibility. Each of plaintiff's excess liability insurers then contribute funds for similar costs until its aggregate limit is met. Defendant is both a primary and excess liability insurer of plaintiff.

The Agreement also names a third-party administrator (the "Administrator") to process and maintain records of the asbestos claims. It further provides that the insurers would pay a pro rata share of a specific per file service fee to the Administrator in return for these processing tasks. The original service fee was \$75.

The Agreement contains a Pennsylvania choice of law provision. The Agreement contains an integration clause and provides that no amendment or modification will be effective unless set forth in writing. In a subsequent written amendment to the Agreement in October 1986 (the "First Amendment"), the parties named plaintiff as the Administrator and provided for a service fee of \$95 which could be renegotiated after two years. In a written amendment in October 1988 (the "Second Amendment"), the parties increased the service fee to \$104.50 for the following two years with a right thereafter to renegotiate the fee "to provide for such adjustment as may be required to reflect the increases in the Consumer Price Index."

In October 1996, defendant notified plaintiff by letter that it had obtained a bid of \$40.00 per file from an outside party to perform the Administrator duties and asked that plaintiff renegotiate its service fee. Plaintiff did not respond. On December 1, 1996, defendant notified plaintiff by letter that it would consider plaintiff to be in breach of the Agreement because plaintiff had not replied to the earlier letter. Defendant further stated that thereafter it would reimburse plaintiff according to a \$40 service fee and did so for several billing statements beginning December 1, 1996.

Plaintiff and defendant then engaged in negotiations about the service fee in December 1997, but did not agree on a

new fee. In February 1998, defendant began to reimburse plaintiff with its share of a \$60 fee, rather than \$104.50.

Plaintiff has asserted claims against defendant for breach of contract for its failure to pay its pro rata share of the \$104.50 service fee and for defendant's inclusion of service fees paid in its calculation of its total contribution towards its aggregate limit. In a counterclaim, defendant seeks a declaration that it satisfied the full \$20 million aggregate limit of excess insurance coverage required under the Agreement because it has paid that amount in defense and indemnity costs and service fees, that it had a right to reduce the service fee and that it has complied with its obligations under the Agreement and the Amendments. Effectively, the counterclaim simply asserts an affirmative defense that defendant has not breached the contract.

Presently before the court is plaintiff's Motion for Judgment on the Pleadings on defendant's counterclaim.

Defendant suggests that plaintiff's motion is really one for summary judgment because whether service fees count against the aggregate limit can be resolved only by resort to extrinsic evidence and because the counterclaim regarding the fee reduction is predicated on a course of dealing which defendant presumes can be shown only with evidence beyond the pleadings. Defendant suggests that both parties be allowed to muster and

present additional evidence. The short answer is that if judgment requires resort to matters beyond the pleadings, the motion will be denied. Plaintiff has characterized its motion as one for judgment on the pleadings and has based it solely on the pleadings and appended contract. The court will treat the motion as styled.

A motion for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c) is governed by the same standard as a motion to dismiss under Rule 12(b)(6). See Turbe v. Gov't. of the Virgin Islands, 938 F.2d 427, 428 (3d Cir. 1999). The court thus views the factual allegations in the pleadings and the inferences reasonably drawn therefrom in a light most favorable to the non-movant, and grants the motion only if it is clear from those allegations and inferences that the non-movant can prove no set of facts in support of his claim which would entitle him to relief. See Jablonski v. Pan American World Airways, 863 F.2d 289 290-91 (3d Cir. 1988). The court may also consider a document explicitly relied upon in or appended to the pleadings without converting the motion to one for summary judgment. See Shaw v. Digital Equipment Corp., 82 F.3d 1194, 1220 (3d Cir. 1996); Pension Benefit Guar. Corp. v. White Consol. Indus., 998 F.2d 1192, 1196 (3d Cir. 1993).

Like other agreements, settlement agreements are construed according to general contract principles. See New York

State Electric & Gas Corp. v. FERC, 875 F.2d 43, 45 (3d Cir. 1989). A court examines a contract to ascertain the intent of the parties as manifested by the language of their written agreement. See Duquesne Light Co. v. Westinghouse Elec. Corp., 66 F.3d 604, 613 (3d Cir. 1995); Bethlehem Steel Corp. v. MATX, Inc., 703 A.2d 39, 42 (Pa. Super. 1997). When the express language of the agreement is clear and unambiguous, the parties' intent is determined only from the writing. See Pacitti v. Macy's, 193 F.3d 766, 773 (3d Cir. 1999); Sunbeam Corp. v. Liberty Mutual Ins. Co., 740 A.2d 1179, 1184 (Pa. Super. 1999). In determining whether an ambiguity exists, however, the court may consider alternative meanings suggested by the parties and any supporting objective indicia, as well as the context in which the agreement was made. Id.; Hullett v. Towers, Perrin, Forster & Corsby, Inc., 38 F.3d 107 111 (3d Cir. 1994).

If a contract is ambiguous, that is reasonably susceptible of alternative interpretations, then interpretation of the contract must be left to the factfinder in view of extrinsic evidence. Stendardo v. Federal Nat'l. Mortgage Ass'n., 991 F.2d 1089, 1094 (3d Cir. 1993); Hutchison v. Sunbeam Coal Corp. 519 A.2d 385, 390 (Pa. 1986). A contract may be ambiguous if it is silent or indefinite on a pertinent matter. See Carpenter Technology Corp. v. Arneo, Inc., 800 F. Supp. 215, 219 (E.D. Pa. 1992), aff'd, 993 F.2d 876 (3d Cir. 1993); Edward E.

Goldberg & Sons, Inc. v. Jersey Central Power & Light Co., 1990 WL 764476, \*2 (E.D. Pa. June 6, 1990). A contract term is not ambiguous, however, merely because the parties disagree about the proper interpretation. See Samuel Rappoport Family Partnership v. Meridian Bank, 657 A.2d 17, 21-22 (Pa. Super. 1995).

When a contract is unambiguous, the court construes and enforces it in accord with its clear terms. See Allegheny Int'l. v. Allegheny Ludburn Steel Corp., 40 F.3d 1416, 1424 (3d Cir. 1994); Mellon Bank, N.A. v. Aetna business Credit, Inc., 619 F.2d 1001, 1011 n. 10 (3d Cir. 1980).

The Agreement is silent on the question of whether service fees count toward exhaustion of the aggregate limits. That the Agreement is also silent regarding treatment of future indemnity costs, which both parties agree may exhaust the aggregate limits, does not make the matter of service fees any less indefinite. It is a matter which can be resolved only by resort to pertinent extrinsic evidence.

The language of the Second Amendment, however, is clear regarding the amount of the service fee and the possibility of an upward adjustment "to reflect increases in the Consumer Price Index." Defendant suggests that the prospect of a downward adjustment is inherent in the duty of good faith and fair dealing of parties to a contract. While the duty of good faith and fair dealing can be an interpretive tool to determine the parties'

justifiable expectations, it cannot be used to override an express contractual term. See Duquesne Light, 66 F.3d at 617; USX Corp. v. Prime Leasing, Inc., 988 F.2d 433, 439 (3d Cir. 1993).

Defendant also contends that plaintiff's willingness to negotiate in December 1997 about a reduced fee is tantamount to an acknowledgment by plaintiff that the Agreement contemplated a downward adjustment. It is not. The most which can reasonably be said is that this shows both parties recognized virtually any contract term may be modified by negotiation resulting in mutual assent. See Empire Properties, Inc. v. Equireal, Inc., 674 A.2d 297, 302-03 (Pa. Super. 1996) (consideration implied from mutual assent of parties to contract modification).

A party to a contract, of course, may not disregard or alter a material term simply because the other party has consented to negotiate about a proposed change. There is no suggestion that the negotiations in question regarding the service fee ever culminated in a written modification. Nevertheless, it is not clear from the face of the pleadings and appended documents that there was no modification.

A written contract may be modified by subsequent agreement through words or conduct of the parties. See Cedrone v. Unity Sav. Ass'n., 609 F. Supp. 250, 254 (E.D. Pa. 1985); Dora v. Dora, 141 A.2d 587, 590-91 (Pa. 1958). A written contract may

be so modified even where there is a provision expressly prohibiting non-written modifications, although such a modification must be proved by clear and convincing evidence. See First Nat. Bank of Pa. v. Lincoln Nat. Life Ins. Co., 824 F.2d 177, 180 (3d Cir. 1987); Nicolella v. Palmer, 248 A.2d 20, 23 (Pa. 1968); Empire Properties, 674 A.2d at 303-04. Depending upon all of the surrounding facts, plaintiff's acceptance without protest of the lesser sum for more than a year under the circumstances may support a finding of a modification. See, e.g., Bonczek v. Pascoe Equipment Co., 450 A.2d 75, 78 (Pa. Super. 1982).

ACCORDINGLY, this                      day of January, 2001, upon consideration of plaintiff's Motion for Judgment on the Pleadings (Doc. #8) and defendant's response thereto, IT IS HEREBY ORDERED that said Motion is DENIED.

BY THE COURT:

JAY C. WALDMAN, J.





*Brand-Building Packaging™*



Creating memorable consumer experiences



Leading with innovation



Contributing to sustainable development



**CROWN HOLDINGS, INC.**

**2007 ANNUAL REPORT**

## **Annual Meeting**

We cordially invite you to attend the Annual Meeting of Shareholders of Common Stock to be held at 9:30 a.m. on Thursday, April 24, 2008 at the Company's Corporate Headquarters, One Crown Way, Philadelphia, Pennsylvania. A formal notice of this Meeting, together with the Proxy Statement and Proxy Card, was mailed to each Shareholder of Common Stock of record as of the close of business on March 11, 2008, and only holders of record on said date will be entitled to vote. The Board of Directors of the Company requests the Shareholders of Common Stock to sign Proxies and return them in advance of the Meeting or register your vote by telephone or through the Internet.

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## Financial Highlights

(in millions, except share, per share, employee, and statistical data)

	2007	2006	% Change
Net sales	\$ 7,727	\$ 6,982	10.7
Gross profit	1,027	892	15.1
Interest expense	318	286	11.2
Income from continuing operations	528	342	54.4
Per average common share:			
Income from continuing operations - diluted	\$ 3.19	\$ 2.01	58.7
Market price (closing) (1)	25.65	20.92	22.6
Total assets (2)	\$ 6,979	\$ 6,409	8.9
Total debt	3,437	3,541	( 2.9)
Shareholders' equity/(deficit) (2)	15	( 494)	
Depreciation and amortization	\$ 229	\$ 227	0.9
Free cash flow	353	164	115.2
Number of employees	21,819	21,749	0.3
Shares outstanding at December 31	159,777,628	162,711,471	( 1.8)
Average shares outstanding - diluted	165,464,273	169,750,763	( 2.5)

(1) Source: New York Stock Exchange Composite Transactions.

(2) Amounts adjusted retrospectively for the change in accounting for U.S. inventories from the LIFO method to the FIFO method.

### Reconciliation of a Non-GAAP Financial Measure:

Free cash flow is not defined under U.S. generally accepted accounting principles (GAAP). Free cash flow should not be considered in isolation or as a substitute for cash flow data prepared in accordance with GAAP and may not be comparable to calculations of a similarly titled measure by other companies.

The Company utilizes free cash flow for planning and evaluating investment opportunities and as a measure of its ability to incur and service debt. Free cash flow is derived from the Company's cash flow statements and a reconciliation to free cash flow is provided below.

#### Reconciliation to Free Cash Flow

	2007	2006
Net cash provided by operating activities	\$ 509	\$ 355
Less: Capital expenditures	( 156)	( 191)
Free cash flow	\$ 353	\$ 164



***Dear Fellow Shareholders:***

We are pleased to report that 2007 was another year of continued success and improvement. Net sales, 73% of which came from outside the United States, rose to \$7.7 billion, up 11% over last year. Gross profit for the year grew to \$1,027 million which was a 15% increase over 2006 gross profit. In addition, we generated in excess of \$500 million in cash from operations which was used to fund new capital projects, buy back common shares and further deleverage our balance sheet.

We believe the positive performance in 2007 validates the strategy we have been pursuing for several years. For the benefit of those newer to the Crown story, let me provide some perspective.

Approximately seven years ago we decided to focus on sustainable rigid metal packaging across a diversified base of end users of beverage, food, personal care and household products around the world. Therefore, we divested our plastic container and plastic closure businesses as well as our health and beauty care packaging businesses. In addition, we exited certain geographic markets which were underperforming.

We also committed ourselves to improving income performance. In the mature markets of North America, we focused on carefully managing our pricing policy and costs, streamlining operations and frugally investing our capital in targeted growth and increased efficiency projects. We have continued to increase the Company's sales and profits in fast growing emerging markets using our outstanding global footprint and extensive market knowledge and experience. Additionally, we dedicated ourselves to be the best in each of our core businesses by all objective measures and to support our worldwide operations with an outstanding research and development capability, helping us to reduce product and process costs and develop new products to build customers' brands.

We are very pleased that in 2007, the results turned out as we had generally expected at the outset of the year. Importantly, we achieved these excellent results through solid volumes across our product lines and in certain cases, such as international beverage cans, we benefited from significant organic volume growth. Equally important, productivity also improved throughout the Company. Additionally, we maintained pricing discipline and, where necessary, we raised prices in response to rising commodity costs. At the same time, our use of capital to achieve these results continued to be carefully and efficiently managed.

In the Americas, our beverage can group had a tremendous year. With solid volumes and productivity gains, this business delivered a 14% increase in segment income.

Our North America Food Can business produced another outstanding year. It benefited from productivity gains and an improved product mix driven by the contribution from a major expansion of our Ideal™ vacuum closure business which was completed in the fourth quarter of 2006. These factors, together with an increase in volume, translated into year-over-year growth in segment income. To meet the growing demand for the Ideal™ closure, we invested in additional capacity for this marketing and performance enhancing product.



The European Beverage segment grew revenues 22% in 2007 over 2006 reflecting an 11% volume increase and the pass through of higher costs. Importantly, the new capacity that we have been adding in the Middle East and Europe made accelerating contributions during the year. The result was a very healthy increase in this business' segment income for 2007 which reflects our longstanding effort to invest in the growing markets of that region.

In 2007, our European Food Can business was negatively affected by the coldest, rainiest growing season in quite a while. Despite the poor weather, volume declined by only 3% for the year compared to 2006. Nevertheless, we were able to manage through this unusual event and deliver 2007 segment income that was in line with the prior year.

Our operations in the Asia-Pacific region had a very good 2007 with increased volumes and segment income. Early in the year, commercial production began on the second beverage can line we installed in our Ho Chi Minh City plant in Vietnam. Additionally, in the fourth quarter, we began shipping cans to customers from our new beverage can facility in Cambodia.

The Company's industry leading research and technology team once again delivered award winning designs for our customers, including fourteen "Best in Metal" Awards from the Metal Packaging Manufacturers' Association. We received the Supreme Gold Award, the competition's highest honor, for our Easylift™ easy-open end technology which the Association named a "step change in consumer openability for food cans." These awards demonstrate Crown's continued leadership in innovation, design and functionality for rigid metal packaging as well as our ability to commercialize new products and processes.

The metal packaging industry and Crown continued to make progress across all dimensions of sustainability. Metal packaging is by its very nature a sustainable container. It prevents spoilage and waste because it provides product protection against light, oxygen and harmful microbes while delivering longer shelf life to retailers. Cans are the most economical container within a manufacturer's supply chain. They have the fastest filling rates and they require minimal transport packaging due to their inherent rigidity. Equally important, aluminum and steel packaging can be recycled almost infinitely without loss of quality while the recycling itself saves significant amounts of energy. The metal packaging community is working hard to enhance sustainability even further and Crown is committed to be part of that program.

Recently, Frank Mechura retired as the President of the Americas Division. We are grateful to Frank for his long and dedicated service to the Company. He left the division, now under the leadership of Ray McGowan, in excellent shape. With Frank's retirement, each of our operating divisions - Americas, Asia-Pacific and Europe - had respective presidents retire over the prior fifteen months and be replaced with highly qualified and experienced operating managers. The 2007 results are a testament to the strength and depth of our global management team as well as the dedication and hard work of our 22,000 associates around the world.



Looking to 2008, we see continuing momentum. Demand in the markets we serve is strong. Our beverage can capacity is essentially sold out in Europe so we are investing to add new capacity in Spain. In addition, increased capacity utilization in Southeast Asia and the Middle East are expected to make further meaningful contributions in 2008. We have also begun construction of a new beverage can plant in the fast growing Brazilian market, which is expected to come on line later in the year. All in all, 2008 is unfolding as another good year for Crown Holdings.

Best regards,

John W. Conway  
Chairman of the Board, President  
and Chief Executive Officer

March 14, 2008

## Board of Directors

**Jenne K. Britell, Ph.D.** (b)

Chairman and Chief Executive Officer of Structured Ventures; former Executive Officer of several General Electric financial services companies; also a Director of U.S.-Russia Investment Fund, Quest Diagnostics, West Pharmaceutical Services and United Rentals

**John W. Conway** (a)

Chairman of the Board, President and Chief Executive Officer; also a Director of PPL Corporation

**Arnold W. Donald** (c)

Former President and Chief Executive Officer of the Juvenile Diabetes Research Foundation International; former Chairman and Chief Executive Officer of Merisant Company; also a Director of Oil-Dri Corporation of America, Carnival Corporation, The Scotts Company and The Laclede Group

**William G. Little** (b, d)

Former Chairman and Chief Executive Officer of West Pharmaceutical Services

**Hans J. Löliger** (c, d)

Vice Chairman of Winter Group; former Chief Executive Officer of SICPA Group; also a Director of Fritz Meyer Holding, Bühler Holding and Franke Holding

**Thomas A. Ralph** (a, b, d)

Retired Partner, Dechert LLP

**Alan W. Rutherford** (a)

Vice Chairman of the Board, Executive Vice President and Chief Financial Officer

**Jim L. Turner** (c)

Principal of JLT Beverages L.P.; former Chairman, President and Chief Executive Officer of Dr Pepper/Seven Up Bottling Group; also a Director of Dean Foods

**William S. Urkief** (b)

Former Senior Vice President and Chief Financial Officer of IKON Office Solutions; also a Director of Suntron Corporation

### Committees

a – Executive

b – Audit

c – Compensation

d – Nominating and Corporate Governance

## Corporate Officers

**John W. Conway**

Chairman of the Board, President and Chief Executive Officer

**Alan W. Rutherford**

Vice Chairman of the Board, Executive Vice President and Chief Financial Officer

**Daniel A. Abramowicz**

Executive Vice President – Corporate Technology and Regulatory Affairs

**Timothy J. Donahue**

Senior Vice President – Finance

**William T. Gallagher**

Senior Vice President, Secretary and General Counsel

**Karen E. Berigan**

Vice President – Corporate Risk Management

**Michael B. Burns**

Vice President and Treasurer

**Kevin C. Clothier**

Vice President and Assistant Corporate Controller

**Michael F. Dunleavy**

Vice President – Corporate Affairs and Public Relations

**Thomas A. Kelly**

Vice President and Corporate Controller

**Torsten J. Kreider**

Vice President – Planning and Development

**Michael J. Rowley**

Assistant Secretary and Assistant General Counsel

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM 10-K

(Mark One)

☒ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934  
For the fiscal year ended December 31, 2007

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934  
For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number 0-50189

**Crown Holdings, Inc.**

(Exact name of registrant as specified in its charter)

Pennsylvania  
(State or other jurisdiction of incorporation or organization)

75-3099507  
(Employer Identification No.)

One Crown Way, Philadelphia, PA  
(Address of principal executive offices)

19154  
(Zip Code)

Registrant's telephone number, including area code: 215-698-5100

SECURITIES REGISTERED PURSUANT TO SECTION 12(b) OF THE ACT:

Title of each class

Common Stock \$5.00 Par Value  
Common Stock Purchase Rights  
7 3/8% Debentures Due 2026  
7 1/2% Debentures Due 2096

Name of each exchange on which registered

New York Stock Exchange  
New York Stock Exchange  
New York Stock Exchange  
New York Stock Exchange

SECURITIES REGISTERED PURSUANT TO SECTION 12(g) OF THE ACT:

NONE

(Title of Class)

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☒ No ☐

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Exchange Act. Yes ☐ No ☒

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filings requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☒

Indicate by check mark whether the Registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☒

Non-accelerated filer ☐ (Do not check if a smaller reporting company)

Accelerated filer ☐

Smaller reporting company ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

As of June 30, 2007, 164,140,218 shares of the Registrant's Common Stock, excluding shares held in Treasury, were issued and outstanding, and the aggregate market value of such shares held by non-affiliates of the Registrant on such date was \$4,098,581,243 based on the New York Stock Exchange closing price for such shares on that date.

As of February 22, 2008, 160,281,670 shares of the Registrant's Common Stock were issued and outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Document

Proxy Statement for the Annual Meeting of Shareholders to be held April 24, 2008

Parts Into Which Incorporated

Part III to the extent described therein



**Crown Holdings, Inc.**

**2007 FORM 10-K ANNUAL REPORT**

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**Crown Holdings, Inc.**

**PART I**

**ITEM 1. BUSINESS**

Crown Holdings, Inc. (the "Company" or the "Registrant") (where the context requires, the "Company" shall include reference to the Company and its consolidated subsidiary companies) is a Pennsylvania corporation.

The Company is a worldwide leader in the design, manufacture and sale of packaging products for consumer goods. The Company's primary products include steel and aluminum cans for food, beverage, household and other consumer products and metal caps and closures. These products are manufactured in the Company's plants both within and outside the United States and are sold through the Company's sales organization to the soft drink, food, citrus, brewing, household products, personal care and various other industries. At December 31, 2007, the Company operated 141 plants along with sales and service facilities throughout 41 countries and had approximately 21,800 employees. Consolidated net sales for the Company in 2007 were \$7.7 billion with 73% of 2007 net sales derived from operations outside the United States, of which 74% of these non-U.S. revenues were derived from operations in the Company's European Division.

During 2005 and 2006, the Company sold its plastic closure business, its remaining European plastics businesses and its Americas health and beauty care business. The sales and segment income amounts presented herein have been recast to exclude those of the divested businesses. Further information about the results of operations of the divested businesses is contained under Note B to the consolidated financial statements.

**DIVISIONS AND OPERATING SEGMENTS**

The Company's business is organized geographically within three divisions, Americas, European and Asia-Pacific. Within the Americas and European Divisions the Company is generally organized along product lines. The Company's reportable segments within the Americas Division are Americas Beverage and North America Food. The Company's reportable segments within the European Division are European Beverage, European Food and European Specialty Packaging. Americas Beverage includes beverage can operations in the U.S., Canada, Mexico and South America. North America Food includes food can and metal vacuum closure operations in the U.S. and Canada. European Beverage includes beverage can operations in Europe, the Middle East and North Africa. European Food includes food can and metal vacuum closure operations in Europe and Africa. European Specialty Packaging includes specialty packaging operations in Europe. No operating segments within the Asia-Pacific Division are included as reportable segments.

Financial information concerning the Company's operating segments, and within selected geographic areas, is set forth within "Management's Discussion and Analysis of Financial Condition and Results of Operations" of this Report and under Note Y to the consolidated financial statements.

**AMERICAS DIVISION**

The Americas Division includes operations in the United States, Canada, Mexico, South America and the Caribbean. These operations manufacture beverage, food and aerosol cans and ends, specialty packaging and metal caps and closures. At December 31, 2007, the division operated 53 plants in 8 countries and had approximately 6,200 employees. In 2007, the Americas Division had net sales of \$2.9 billion. Approximately 70% of the division's 2007 net sales were derived from within the United States. Within the Americas Division the Company has determined that there are two reportable segments: Americas Beverage and North America Food. Other operating segments consist of North America Aerosol, and plastic packaging and food can operations in Mexico, South America and the Caribbean.

## **Crown Holdings, Inc.**

### **Americas Beverage**

The Americas Beverage segment manufactures aluminum beverage cans and ends and steel crowns, commonly referred to as "bottle caps." Americas Beverage had net sales in 2007 of \$1.8 billion (22.7% of consolidated net sales) and segment income (as defined under Note Y to the consolidated financial statements) of \$182 million.

### **North America Food**

The North America Food segment manufactures steel and aluminum food cans and ends and metal vacuum closures. North America Food had net sales in 2007 of \$849 million (11.0% of consolidated net sales) and segment income (as defined under Note Y to the consolidated financial statements) of \$76 million.

## **EUROPEAN DIVISION**

The European Division includes operations in Europe, the Middle East and Africa. These operations manufacture beverage, food and aerosol cans and ends, specialty packaging, metal vacuum closures and caps, and canmaking equipment. At December 31, 2007 the division operated 75 plants in 27 countries and had approximately 13,200 employees. Net sales in 2007 were \$4.2 billion. Net sales in the United Kingdom of \$855 million and in France of \$679 million represented 20% and 16% of division net sales in 2007.

Within the European Division the Company has determined that there are three reportable segments: European Beverage, European Food and European Specialty Packaging. European Aerosol does not meet the criteria of a reportable segment.

### **European Beverage**

The European Beverage segment manufactures steel and aluminum beverage cans and ends and steel crowns. European Beverage had net sales in 2007 of \$1.4 billion (18.6% of consolidated net sales) and segment income (as defined under Note Y to the consolidated financial statements) of \$185 million.

### **European Food**

The European Food segment manufactures steel and aluminum food cans and ends, and metal vacuum closures. European Food had net sales in 2007 of \$2.0 billion (25.8% of consolidated net sales) and segment income (as defined under Note Y to the consolidated financial statements) of \$173 million.

### **European Specialty Packaging**

The European Specialty Packaging segment manufactures a wide variety of specialty containers, with numerous lid and closure variations. In the consumer market, the Company manufactures a wide variety of steel containers for cookies and cakes, tea and coffee, confectionery, giftware, personal care, tobacco, wine and spirits, as well as non-processed food products. In the industrial market, the Company manufactures steel containers for paints, inks, chemical, automotive and household products.

European Specialty Packaging had net sales in 2007 of \$460 million (6.0% of consolidated net sales) and segment income (as defined under Note Y to the consolidated financial statements) of \$14 million.

## **ASIA-PACIFIC DIVISION**

The Asia-Pacific Division manufactures aluminum beverage cans and ends, steel food and aerosol cans and ends, and metal caps. At December 31, 2007, the division operated 13 plants in 6 countries and had approximately 2,200 employees. Net sales in 2007 were \$578 million (7.5% of consolidated net sales) and beverage can and end sales were approximately 80% of division sales. No operating segments within the Asia-Pacific division are included as reportable segments.

## **Crown Holdings, Inc.**

### **PRODUCTS**

#### *Beverage Cans*

The Company supplies beverage cans and ends and other packaging products to a variety of beverage and beer companies, including Anheuser-Busch, Cadbury Schweppes, Coca-Cola, Cott Beverages, Heineken, InBev, Kroger, National Beverage, Pepsi-Cola and Scottish & Newcastle, among others. The Company's beverage business is built around local, regional and global markets, which has served to develop the Company's understanding of global consumer expectations.

The beverage market is dynamic and highly competitive, with each packaging manufacturer striving to satisfy consumers' ever-changing needs. The Company competes by offering its customers broad market knowledge, resources at all levels of its worldwide organization and extensive research and development capabilities that have enabled the Company to provide its customers with innovative products. The Company meets its customers' beverage packaging needs with an array of two-piece beverage cans and ends and metal bottle caps. Recent innovations include the SuperEnd™ beverage can end and shaped beverage cans. The Company expects to continue to add capacity in many of the growth markets around the world.

Beverage can manufacturing is capital intensive, requiring significant investment in tools and machinery. The Company seeks to effectively manage its invested capital and is continuing its efforts to reduce can and end diameter, lighten its cans, reduce non-metal costs and restructure production processes.

#### *Food Cans and Closures*

The Company manufactures a variety of food cans and ends, including two-and three-piece cans in numerous shapes and sizes, and sells food cans to food marketers such as Bonduelle, ConAgra, Continentale, H.J. Heinz, Mars, Menu Foods, Nestlé, Premier Foods and Stockmeyer, among others. The Company offers a wide variety of metal closures and sealing equipment solutions to leading marketers such as Abbott Laboratories, Anheuser-Busch, H. J. Heinz, Kraft, Nestlé, and Unilever, among others, from a network of metal closure plants around the world. The Company supplies total packaging solutions, including metal and composite closures, capping systems and services while working closely with customers, retailers and glass and plastic container manufacturers to develop innovative closure solutions and meet customer requirements.

Technologies used to produce food cans include three-piece welded, two-piece drawn and wall-ironed and two-piece drawn and redrawn. The Company also offers its LIFTOFF™ series of food ends, including its EOLE™ (easy-open low energy) full pull-out steel food can ends, and PeelSeam™, a flexible aluminum foil laminated end. The Company offers expertise in closure design and decoration, ranging from quality printing of the closure in up to nine colors, to inside-the-cap printing, which offers customers new promotional possibilities, to better product protection through Ideal Closures™ and Superplus™. The Company's commitment to innovation has led to developments in packaging materials, surface finishes, can shaping, lithography, filling, retorting, sealing and opening techniques and environmental performance.

The Company manufactures easy open, vacuum and conventional ends for a variety of heat-processed and dry food products including fruits and vegetables, meat and seafood, soups, ready-made meals, infant formula, coffee and pet food.

#### *Aerosol Cans*

The Company's customers for aerosol cans and ends include manufacturers of personal care, food, household and industrial products, including Procter & Gamble (Gillette), S.C. Johnson and Unilever, among others. The aerosol can business, while highly competitive, is marked by its high value-added service to customers. Such value-added services include, among others, the ability to manufacture multiple sizes and design customer labels, multiple color schemes and shaped packaging.

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### ***Specialty Packaging***

The Company's specialty packaging business is located primarily in Europe and serves many major European and multinational companies. The Company produces a wide variety of specialty containers, with numerous lid and closure variations. The Company's specialty packaging customers include Abbott Laboratories, Akzo Nobel, Cadbury Schweppes, Nestlé, Sigma, Teisseire, Tikkurila Oy, Wrigley and United Biscuits, among others.

In the consumer market, the Company manufactures a wide variety of steel containers for cookies and cakes, tea and coffee, confectionery, giftware, personal care, tobacco, wines and spirits, as well as non-processed food products. In the industrial market, the Company manufactures steel containers for paints, coatings, inks, chemical, automotive and household products.

### **SALES AND DISTRIBUTION**

Global marketers continue to demand the consolidation of their supplier base under long-term arrangements and qualify those suppliers on the basis of their ability to provide global service, innovative designs and technologies in a cost-effective manner.

With its global reach, the Company markets and sells products to customers through its own sales and marketing staff located within each operating segment. Regional sales personnel support the segments' staffs. Contracts with global suppliers may be centrally negotiated, although products are ordered through and distributed directly by each plant. The Company's facilities are generally located in proximity to their respective major customers. The Company maintains contact with customers in order to develop new business and to extend the terms of its existing contracts.

Many customers provide the Company with quarterly or annual estimates of product requirements along with related quantities pursuant to which periodic commitments are given. Such estimates assist the Company in managing production and controlling working capital levels. The Company schedules its production to meet customer requirements. Because the production time for the Company's products is short, any backlog of customer orders in relation to overall sales is not significant.

### **SEASONALITY**

The food packaging business is somewhat seasonal with the first quarter tending to be the slowest period as the autumn packing period in the Northern Hemisphere has ended and new crops are not yet planted. The industry enters its busiest period in the third quarter when the majority of fruits and vegetables are harvested. Weather represents a substantial uncertainty in the yield of food products and is a major factor in determining the demand for food cans in any given year.

The Company's beverage packaging business is predominately located in the Northern Hemisphere. Generally, beverage products are consumed in greater amounts during the warmer months of the year and sales and earnings have generally been higher in the second and third quarters of the calendar year.

The Company's other businesses primarily include aerosol and specialty packaging and canmaking equipment, which tend not to be significantly affected by seasonal variations.

### **COMPETITION**

Most of the Company's products are sold in highly competitive markets, primarily based on price, quality, service and performance. The Company competes with other packaging manufacturers as well as with fillers, food processors and packers, some of who manufacture containers for their own use and for sale to others. The Company's competitors include, but are not limited to, Ball Corporation, BWAY Corporation, Impress Holdings B.V., Metal Container Corporation, Rexam Plc and Silgan Holdings Inc.

## **CUSTOMERS**

The Company's largest customers consist of many of the leading manufacturers and marketers of packaged products in the world. Consolidation trends among beverage and food marketers has led to a concentrated customer base. The Company's top ten global customers represented in the aggregate approximately 28% of its 2007 net sales. In each of the years in the period 2005 through 2007, no one customer of the Company accounted for more than ten percent of the Company's net sales. Each operating segment of the Company has major customers and the loss of one or more of these major customers could have a material adverse effect on an individual segment or the Company as a whole. Major customers include those listed above under the Products discussion. In addition to sales to Coca-Cola and Pepsi-Cola, the Company also supplies independent licensees of Coca-Cola and Pepsi-Cola.

## **RESEARCH AND DEVELOPMENT**

The Company's principal Research, Development & Engineering (RD&E) centers are located in Alsip, Illinois and Wantage, England. The Company depends on its centralized RD&E capabilities to (1) promote development of value-added packaging systems, (2) design cost-efficient manufacturing systems and materials that also provide continuous quality improvement, (3) support technical needs in customer and vendor relationships, and (4) provide engineering services for the Company's worldwide packaging activities. These capabilities allow the Company to identify market opportunities by working directly with customers to develop new products, such as the creation of new packaging shapes and consumer-valued features.

Recent innovations include:

- The SuperEnd™ beverage can end, which requires less metal than existing ends without any reduction in strength. The SuperEnd™ also offers improved pourability, drinkability, ease-of-opening and appearance over traditional ends. This technology is now commercially available globally through the Company's efforts and through its licensees in South Africa, Japan and Australia.
- Patented EasyLift™ full pullout steel food can ends, launched recently by Nestlé for pet food. This revolutionary new end provides improved tab access and openability even compared to the Company's market leading EOLE™ ends. Consumer tests indicate strong preference for this end over those of our competitors.
- An expanding family of PeelSeam™ flexible lidding for cans that provides exceptional ease of opening and high quality graphics, and can still be applied with traditional closing technology.
- Patented composite (metal and plastic) closures including the Company's Ideal™ product line. These closures offer excellent barrier performance and improved tamper resistance while requiring less strength to open than standard metal vacuum closures. The Company supplies composite closures to a growing list of customers including Abbott Laboratories (Ensure), PepsiCo (Tropicana), Tree Top, Smuckers and Kraft (Planters). Other composite closures include Preson™ and the Company's low-migration Superplus™ closure for baby food.
- Value-added shaped beverage, food and aerosol cans, such as Heineken's keg can, the Waistline soup can for Crosse & Blackwell and shaped aerosol containers for Wera Kraftform Fluid. This technology has the capability of reinforcing brand image, providing differentiation on the shelf, and reducing counterfeiting.
- New specialty metal containers such as for Altoids Sours, Ballantine Whisky and the new Bosch Isio lawn tools. In addition, the new Clipper paint can was launched that can be opened and closed without the need of a prying tool.
- A double-seam monitor that identifies seam defects on food or beverage containers in real time during high-speed seaming operations. In addition to reducing seam defects in its plants as well as those of fillers, the seamer can be monitored remotely to avoid downtime.

Along with its licensing of SuperEnd™ technology the Company has also licensed BiCan™ technology and can shaping technology in Australia and New Zealand.

The Company spent \$48 million in 2007, \$42 million in 2006 and \$47 million in 2005 on RD&E activities. Certain of these activities are expected to improve and expand the Company's product lines in the future.

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These expenditures include methods to improve manufacturing efficiencies, reduce unit costs, and develop value-added packaging systems, but do not include product and/or process developments occurring in the Company's decentralized business units.

### **MATERIALS AND SUPPLIERS**

The Company in its manufacturing operations uses various raw materials, primarily aluminum and steel for packaging. In general, these raw materials are purchased in highly competitive, price-sensitive markets which have historically exhibited price and demand cyclicalities. These and other materials used in the manufacturing process have historically been available in adequate supply from multiple sources. Generally, the Company's principal raw materials are obtained from the major suppliers in the countries in which it operates plants. Some plants in less developed countries, which do not have local mills, obtain raw materials from nearby, more developed countries. The Company has agreements for what it considers adequate supplies of raw materials. However, sufficient quantities may not be available in the future due to, among other things, shortages due to excessive demand, weather or other factors, including disruptions in supply caused by raw material transportation or production delays. From time to time, some of the raw materials have been in short supply, but to date, these shortages have not had a significant impact on the Company's operations.

In 2007, consumption of steel and aluminum represented approximately 27% and 34%, respectively, of consolidated cost of products sold, excluding depreciation and amortization. Due to the significance of these raw materials to overall cost of products sold, raw material efficiency is a critical cost component of the products manufactured. Supplier consolidations, changes in ownership, government regulations, political unrest and increased demand for raw materials in the packaging and other industries, among other risk factors, provide uncertainty as to the level of prices at which the Company might be able to source such raw materials in the future. Moreover, the prices of aluminum and steel have at times been subject to volatility.

During 2007, the average market price for steel used in the Company's global packaging operations increased approximately 4%. Suppliers indicate that the difficulty in obtaining raw materials combined with rising utility and distribution costs may require additional steel price increases for their customers.

The average price of aluminum ingot on the London Metal Exchange ("LME") increased approximately 3% in 2007. The Company generally attempts to mitigate its aluminum ingot risk by matching its purchase obligations with its sales agreements; however, there can be no assurance that the Company will be able to fully mitigate that risk.

The Company, in agreement with customers in many cases, also uses commodity and foreign currency forwards in an attempt to manage the exposure to steel and aluminum price volatility.

There can be no assurance that the Company will be able to fully recover from its customers the impact of aluminum and steel price increases or that the use of derivative instruments will effectively manage the Company's exposure to price volatility. In addition, if the Company is unable to purchase steel and aluminum for a significant period of time, its metal-consuming operations would be disrupted and if the Company is unable to fully recover the higher cost of steel and aluminum, its financial results may be adversely affected. The Company continues to monitor this situation and the effect on its operations.

In response to the volatility of raw material prices, ongoing productivity and cost reduction efforts in recent years have focused on improving raw material cost management.

The Company's manufacturing facilities are dependent, in varying degrees, upon the availability of water and processed energy, such as, natural gas and electricity. Certain of these sources may become difficult or impossible to obtain on acceptable terms due to external factors which could increase the Company's costs or interrupt its business.

Metal, by its very nature, can be recycled at high levels and can be repeatedly reused to form new consumer packaging with minimal or no degradation in its performance, quality or safety. By recycling metal, large amounts of energy can be saved.

## **ENVIRONMENTAL MATTERS**

The Company's operations are subject to numerous laws and regulations governing the protection of the environment, disposal of waste, discharges into water, emissions into the atmosphere and the protection of employee health and safety. Future regulations may impose stricter environmental requirements on the packaging industry and may require additional capital investment. Anticipated future restrictions in some jurisdictions on the use of certain coatings may require the Company to employ additional control equipment or process modifications. The Company has a Corporate Environmental Protection Policy, and environmental considerations are among the criteria by which the Company evaluates projects, products, processes and purchases. There can be no assurance that current or future environmental laws or remediation liabilities will not have a material effect on the Company's financial condition, liquidity or results of operations. Discussion of the Company's environmental matters is contained within "Management's Discussion and Analysis of Financial Condition and Results of Operations" of this Report under the caption "Environmental Matters," and under Note N to the consolidated financial statements.

## **WORKING CAPITAL**

The Company generally uses cash during the first nine months of the year to finance seasonal working capital needs. The Company's working capital requirements are funded by its revolving credit facility, its receivables securitization and factoring programs, and from operations.

Further information relating to the Company's liquidity and capital resources is set forth within "Management's Discussion and Analysis of Financial Condition and Results of Operations," of this Report under the caption "Debt Refinancing" and under Note S and Note T to the consolidated financial statements.

Collection and payment periods tend to be longer for the Company's operations located outside the U.S. due to local business practices.

## **EMPLOYEES**

At December 31, 2007, the Company had approximately 21,800 employees. Collective bargaining agreements with varying terms and expiration dates cover approximately 13,900 employees. The Company does not expect that renegotiations of the agreements expiring in 2008 will have a material adverse effect on its results of operations, financial position or cash flow.

## **AVAILABLE INFORMATION**

The Company's Internet website address is [www.crowncork.com](http://www.crowncork.com). The information on the Company's website is not incorporated by reference in this Annual Report on Form 10-K. The Company's Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and all amendments to those reports filed by the Company with the U.S. Securities and Exchange Commission pursuant to sections 13(a) and 15(d) of the Securities Exchange Act of 1934, as amended, are accessible free of charge through the Company's website as soon as reasonably practicable after the documents are filed with, or otherwise furnished to, the U. S. Securities and Exchange Commission.

The Company's Code of Business Conduct and Ethics, its Corporate Governance Guidelines, and the charters of its Audit, Compensation and Nominating and Corporate Governance committees are available on the Company's website. These documents are also available in print to any shareholder who requests them. The Company intends to disclose amendments to and waivers of the Code of Business Conduct and Ethics on the Company's website.



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**ITEM 1A. RISK FACTORS**

In addition to factors discussed elsewhere in this report and in "Management's Discussion and Analysis of Financial Condition and Results of Operations," the following are some of the important factors that could materially and adversely affect the Company's business, financial condition and results of operations.

***The substantial indebtedness of the Company could prevent it from fulfilling its obligations.***

The Company is highly leveraged. As a result of its substantial indebtedness, a significant portion of the Company's cash flow will be required to pay interest and principal on its outstanding indebtedness and the Company may not generate sufficient cash flow from operations, or have future borrowings available under its credit facilities, to enable it to pay its indebtedness or to fund other liquidity needs. As of December 31, 2007, the Company had approximately \$3.4 billion of total indebtedness and shareholders' equity of \$15 million. The Company's ratio of earnings to fixed charges was 1.6 times for 2007 as discussed in Exhibit 12 to this Annual Report. The Company's €460 million of first priority senior secured notes mature on September 1, 2011 and its \$800 million senior secured revolving credit facilities mature on May 15, 2011. The Company's \$358 million and €281 million senior secured term loan facilities mature on November 15, 2012.

The substantial indebtedness of the Company could:

- make it more difficult for the Company to satisfy its obligations;
- increase the Company's vulnerability to general adverse economic and industry conditions, including rising interest rates;
- limit the Company's ability to obtain additional financing;
- require the Company to dedicate a substantial portion of its cash flow from operations to service its indebtedness, thereby reducing the availability of its cash flow to fund future working capital, capital expenditures and other general corporate requirements;
- require the Company to sell assets used in its business;
- limit the Company's flexibility in planning for, or reacting to, changes in its business and the industry in which it operates; and
- place the Company at a competitive disadvantage compared to its competitors that have less debt.

If its financial condition, operating results and liquidity deteriorate, the Company's creditors may restrict its ability to obtain future financing and its suppliers could require prepayment or cash on delivery rather than extend credit to it. If the Company's creditors restrict advances, the Company's ability to generate cash flows from operations sufficient to service its short and long-term debt obligations will be further diminished. In addition, the Company's ability to make payments on and refinance its debt and to fund its operations will depend on the Company's ability to generate cash in the future.

***Some of the Company's indebtedness is subject to floating interest rates, which would result in its interest expense increasing if interest rates rise.***

As of December 31, 2007, approximately \$0.9 billion of the Company's \$3.4 billion of total indebtedness was subject to floating interest rates. Changes in economic conditions could result in higher interest rates, thereby increasing the Company's interest expense and reducing funds available for operations or other purposes. The Company's annual interest expense was \$318 million, \$286 million and \$361 million for 2007, 2006 and 2005, respectively. Based on the amount of variable rate debt outstanding as of December 31, 2007, a 1% increase in variable interest rates would increase its annual interest expense by \$9 million. The actual effect of a 1% increase could be more than \$9 million as the Company's borrowings on its variable rate debt are higher during the year than at the end of the year. In addition, the cost of the Company's securitization facilities would also increase with an increase in floating interest

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rates. Accordingly, the Company may experience economic losses and a negative impact on earnings as a result of interest rate fluctuations. Although the Company may use interest rate protection agreements from time to time to reduce its exposure to interest rate fluctuations in some cases, it may not elect or have the ability to implement hedges or, if it does implement them, they may not achieve the desired effect. See "Management's Discussion and Analysis of Financial Condition and Results of Operations—Financial Position—Market Risk" in this report.

***Notwithstanding the Company's current indebtedness levels and restrictive covenants, the Company may still be able to incur substantial additional debt, which could exacerbate the risks described above.***

The Company may be able to incur additional debt in the future. Although the Company's credit facilities and the indentures governing its outstanding notes contain restrictions on the Company's ability to incur indebtedness, those restrictions are subject to a number of exceptions. In addition, the Company may consider investments in joint ventures or acquisitions, which may increase the Company's indebtedness. Adding new debt to current debt levels could intensify the related risks that the Company and its subsidiaries now face.

***Restrictive covenants in its debt agreements could restrict the Company's operating flexibility.***

The Company's credit facilities and the indentures governing its secured and unsecured notes contain affirmative and negative covenants that limit the ability of the Company and its subsidiaries to take certain actions. These restrictions may limit the Company's ability to operate its businesses and may prohibit or limit its ability to enhance its operations or take advantage of potential business opportunities as they arise. The credit facilities require the Company to maintain specified financial ratios and satisfy other financial conditions. The credit facilities and the agreements or indentures governing the Company's secured and unsecured notes restrict, among other things and subject to certain exceptions, the ability of the Company to:

- incur additional debt;
- pay dividends or make other distributions, repurchase capital stock, repurchase subordinated debt and make certain investments or loans;
- create liens and engage in sale and leaseback transactions;
- create restrictions on the payment of dividends and other amounts to the Company from subsidiaries;
- change accounting treatment and reporting practices;
- enter into agreements restricting the ability of a subsidiary to pay dividends to, make or repay loans to, transfer property to, or guarantee indebtedness of, the Company or any of its other subsidiaries;
- sell or acquire assets and merge or consolidate with or into other companies; and
- engage in transactions with affiliates.

In addition, the indentures and agreements governing the Company's outstanding unsecured notes limit, among other things, the ability of the Company to enter into certain transactions, such as mergers, consolidations, asset sales, sale and leaseback transactions and the pledging of assets. In addition, if the Company or certain of its subsidiaries experience specific kinds of changes of control, the Company's credit facilities are due and payable and the Company must offer to repurchase outstanding notes.

The breach of any of these covenants by the Company or the failure by the Company to meet any of these ratios or conditions could result in a default under any or all of such indebtedness. If a default occurs under any such indebtedness, all of the outstanding obligations thereunder could become immediately due and payable, which could result in a default under the Company's other outstanding debt

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and could lead to an acceleration of obligations related to other outstanding debt. The ability of the Company to comply with the provisions of the credit facilities, the agreements or indentures governing other indebtedness it may incur in the future and its outstanding secured and unsecured notes can be affected by events beyond its control and, therefore, it may be unable to meet those ratios and conditions.

***The Company is subject to certain restrictions that may limit its ability to make payments out of the cash reserves shown in its consolidated financial statements.***

The ability of the Company's subsidiaries and joint ventures to pay dividends, make distributions, provide loans or make other payments to the Company may be restricted by applicable state and foreign laws, potentially adverse tax consequences and their agreements, including agreements governing their debt. In addition, the equity interests of the Company's joint venture partners or other shareholders in its non-wholly owned subsidiaries in any dividend or other distribution made by these entities would need to be satisfied on a proportionate basis with the Company. As a result, the Company may not be able to access its cash flow to service its debt, and the amount of cash and cash flow reflected on its financial statements may not be fully available to the Company.

***Pending and future asbestos litigation and payments to settle asbestos-related claims could reduce the Company's cash flow and negatively impact its financial condition.***

Crown Cork & Seal Company, Inc., a wholly-owned subsidiary of the Company ("Crown Cork"), is one of many defendants in a substantial number of lawsuits filed throughout the United States by persons alleging bodily injury as a result of exposure to asbestos. In 1963, Crown Cork acquired a subsidiary that had two operating businesses, one of which is alleged to have manufactured asbestos-containing insulation products. Crown Cork believes that the business ceased manufacturing such products in 1963.

The Company recorded pre-tax charges of \$29 million, \$10 million, \$10 million, \$35 million and \$44 million to increase its accrual for asbestos-related liabilities in 2007, 2006, 2005, 2004 and 2003, respectively. As of December 31, 2007, Crown Cork's accrual for pending and future asbestos-related claims was \$201 million. Crown Cork's accrual includes estimates for probable costs for claims through the year 2017. Estimated additional claims costs of \$42 million beyond 2017 have not been included in the Company's liability, as the Company believes cost projections beyond ten years are inherently unreliable due to potential changes in the litigation environment and other factors whose impact cannot be known or reasonably estimated. Assumptions underlying the accrual include that claims for exposure to asbestos that occurred after the sale of the subsidiary's insulation business in 1964 would not be entitled to settlement payouts and that the Georgia, South Carolina, Florida, Ohio, Mississippi, Texas and Pennsylvania asbestos legislation described under Note M to the consolidated financial statements are expected to have a highly favorable impact on Crown Cork's ability to settle or defend against asbestos-related claims in those states and other states where Pennsylvania law may apply.

Crown Cork made cash payments of \$26 million, \$26 million, \$29 million, \$41 million and \$68 million in 2007, 2006, 2005, 2004 and 2003, respectively, for asbestos-related claims. These payments have reduced and any such future payments will reduce the cash flow available to Crown Cork for its business operations and debt payments.

Asbestos-related payments and defense costs may be significantly higher than those estimated by Crown Cork because the outcome of this type of litigation (and, therefore, Crown Cork's reserve) is subject to a number of assumptions and uncertainties, such as the number or size of asbestos-related claims or settlements, the number of financially viable responsible parties, the extent to which Georgia, South Carolina, Florida, Ohio, Mississippi and Texas statutes relating to asbestos liability are upheld and/or applied by Georgia, South Carolina, Florida, Ohio, Mississippi and Texas courts, respectively, the extent to which a Pennsylvania statute relating to asbestos liability is upheld and/or applied by courts in states other than Pennsylvania, Crown Cork's ability to obtain resolution without payment of asbestos-related claims by persons alleging first exposure to asbestos after 1964, and the potential impact of any pending or future asbestos-related legislation. Accordingly, Crown Cork may be required to make payments for claims substantially in excess of its accrual, which could reduce the Company's cash flow and impair its ability to satisfy its obligations. As a result of the uncertainties regarding its asbestos-

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related liabilities and its reduced cash flow, the ability of the Company to raise new money in the capital markets is more difficult and more costly, and the Company may not be able to access the capital markets in the future. Further information regarding Crown Cork's asbestos-related liabilities is presented within "Management's Discussion and Analysis of Financial Condition and Results of Operations" under the headings, "Provision for Asbestos" and "Liquidity and Capital Resources" and under Note M to the consolidated financial statements.

***The Company has significant pension plan obligations worldwide and significant unfunded postretirement obligations, which could reduce its cash flow and negatively impact its financial condition.***

The Company sponsors various pension plans worldwide, with the largest funded plans in the U.K., U.S. and Canada. In 2007, 2006, 2005, 2004 and 2003, the Company contributed \$65 million, \$90 million, \$401 million, \$171 million and \$122 million, respectively, to its pension plans and currently anticipates its 2008 funding to be approximately \$67 million. Pension expense in 2008 is expected to increase to approximately \$18 million from \$10 million in 2007. A 0.25% change in the expected rate of return would change 2008 pension expense by approximately \$12 million. A 0.25% change in the discount rates would change 2008 pension expense by approximately \$9 million.

As of December 31, 2007, the Company has a credit balance of \$230 million for its U.S. funded plan, arising from past contributions, that can be used to offset future contributions that would otherwise be required. Based on current assumptions, the Company has no minimum U.S. pension funding requirement in calendar year 2008 for its funded plan, and expects to make payments of approximately \$15 million related to its supplemental executive retirement plan. While overfunded as calculated in accordance with U.S. generally accepted accounting principles, the Company's U.S. pension plan was underfunded on a termination basis by approximately \$61 million as of December 31, 2007. In addition, its retiree medical plans are unfunded. The Company's pension plan assets consist primarily of common stocks and fixed income securities. If the performance of investments in the plan does not meet the Company's assumptions, the underfunding of the pension plan may increase and the Company may have to contribute additional funds to the pension plan. In addition, the Pension Protection Act of 2006 could require the Company to accelerate the timing of its contributions under its U.S. pension plan and also increase the premiums paid by the Company to the Pension Benefit Guaranty Corporation. The actual impact of the Pension Protection Act on the Company's U.S. pension plan funding requirements will depend upon the interest rates required for determining the plan's liabilities and the investment performance of the plan's assets. An acceleration in the timing of pension plan contributions and an increase in required premiums could decrease the Company's cash available to pay its outstanding obligations and its net income. While its U.S. pension plan continues in effect, the Company continues to incur additional pension obligations.

The Company's U.S. pension plan is subject to the Employee Retirement Income Security Act of 1974, or ERISA. Under ERISA, the Pension Benefit Guaranty Corporation, or PBGC, has the authority to terminate an underfunded plan under certain circumstances. In the event its U.S. pension plan is terminated for any reason while the plan is underfunded, the Company will incur a liability to the PBGC that may be equal to the entire amount of the underfunding. In addition, as of December 31, 2007, the unfunded accumulated postretirement benefit obligation, as calculated in accordance with U.S. generally accepted accounting principles, for retiree medical benefits was approximately \$483 million, based on assumptions set forth under Note W to the consolidated financial statements.

***The Company has had net operating losses in the past and may not generate profits in the future.***

Operating losses could limit the Company's ability to service its debt and fund its operations. For the fiscal years ended December 31, 2005 and 2003, the Company had consolidated losses from continuing operations of \$312 million and \$56 million, respectively. The Company had income from continuing operations of \$528 million, \$342 million and \$36 million for the fiscal years ended December 31, 2007, 2006 and 2004, respectively. However, the Company may not generate net income in the future.

**Crown Holdings, Inc.**

***The Company's principal markets may be subject to overcapacity and intense competition, which could reduce the Company's net sales and net income.***

Food and beverage cans are standardized products, allowing for relatively little differentiation among competitors. This could lead to overcapacity and price competition among food and beverage producers, if capacity growth outpaced the growth in demand for food and beverage cans and overall manufacturing capacity exceeded demand. These market conditions could reduce product prices and contribute to declining revenue and net income and increasing debt balances. As a result of industry overcapacity and price competition, the Company may not be able to increase prices sufficiently to offset higher costs or to generate sufficient cash flow. The North American food and beverage can market, in particular, is considered to be a mature market, characterized by slow growth and a sophisticated distribution system.

Competitive pricing pressures, overcapacity, the failure to develop new product designs and technologies for products, as well as other factors could cause the Company to lose existing business or opportunities to generate new business and could result in decreased cash flow and net income.

***The Company is subject to competition from substitute products, which could result in lower profits and reduced cash flows.***

The Company is subject to substantial competition from producers of alternative packaging made from glass, cardboard, and plastic, particularly from producers of plastic food and beverage containers, whose market has grown over the past several years. The Company's sales depend heavily on the volumes of sales by the Company's customers in the food and beverage markets. Changes in preferences for products and packaging by consumers of prepackaged food and beverage cans significantly influence the Company's sales. Changes in packaging by the Company's customers may require the Company to re-tool manufacturing operations, which could require material expenditures. In addition, a decrease in the costs of, or a further increase in consumer demand for, alternative packaging could result in lower profits and reduced cash flows for the Company.

***The Company is subject to the effects of fluctuations in foreign exchange rates, which may reduce its net sales and cash flow.***

The Company is exposed to fluctuations in foreign currencies as a significant portion of its consolidated net sales, its costs, assets and liabilities, are denominated in currencies other than the U.S. dollar. For the fiscal years ended December 31, 2007, 2006 and 2005, the Company derived approximately 73%, 72% and 70%, respectively, of its consolidated net sales from sales in foreign currencies. In its consolidated financial statements, the Company translates local currency financial results into U.S. dollars based on average exchange rates prevailing during a reporting period. During times of a strengthening U.S. dollar, its reported international revenue and earnings will be reduced because the local currency will translate into fewer U.S. dollars. Conversely, a weakening U.S. dollar will effectively increase the dollar-equivalent of the Company's expenses and liabilities denominated in foreign currencies. The Company's translation and exchange adjustments reduced reported income before tax by \$6 million in 2006 and \$94 million in 2005, and increased reported income before tax by \$12 million in 2007, \$98 million in 2004 and \$207 million in 2003. See "Management's Discussion and Analysis of Financial Condition and Results of Operations—Financial Position—Market Risk." Although the Company may use financial instruments such as foreign currency forwards from time to time to reduce its exposure to currency exchange rate fluctuations in some cases, it may not elect or have the ability to implement hedges or, if it does implement them, they may not achieve the desired effect.

***The Company's international operations are subject to various risks that may lead to decreases in its financial results.***

The risks associated with operating in foreign countries may have a negative impact on the Company's liquidity and net income. The Company's international operations generated approximately 73%, 72% and 70% of its consolidated net sales in 2007, 2006 and 2005, respectively. The business strategy of the Company includes continued expansion of international activities. However, the Company's international operations are subject to various risks associated with operating in foreign countries, including:

- restrictive trade policies;

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- inconsistent product regulation or policy changes by foreign agencies or governments;
- duties, taxes or government royalties, including the imposition or increase of withholding and other taxes on remittances and other payments by non-U.S. subsidiaries;
- customs, import/export and other trade compliance regulations;
- foreign exchange rate risks;
- difficulty in collecting international accounts receivable and potentially longer payment cycles;
- increased costs in maintaining international manufacturing and marketing efforts;
- non-tariff barriers and higher duty rates;
- difficulties in enforcement of contractual obligations and intellectual property rights;
- exchange controls;
- national and regional labor strikes;
- language and cultural barriers;
- high social benefit costs for labor, including costs associated with restructurings;
- political, social, legal and economic instability;
- taking of property by nationalization or expropriation without fair compensation;
- imposition of limitations on conversions of foreign currencies into dollars or payment of dividends and other payments by non-U.S. subsidiaries;
- hyperinflation and currency devaluation in certain foreign countries where such currency devaluation could affect the amount of cash generated by operations in those countries and thereby affect the Company's ability to satisfy its obligations; and
- war, civil disturbance and acts of terrorism.

There can be no guarantee that a deterioration of economic conditions in countries in which the Company operates would not have a material impact.

***The Company's profits will decline if the price of raw materials or energy rises and it cannot increase the price of its products.***

The Company uses various raw materials, such as aluminum and steel for packaging, in its manufacturing operations. Sufficient quantities of these raw materials may not be available in the future. In particular, steel suppliers have indicated that a shortage of raw materials to produce steel and increased global demand, primarily in China, have combined to create the need for steel price increases to their customers and have resulted in a tighter supply of steel which could require allocation among their steel purchasing customers. Moreover, the prices of certain of these raw materials, such as aluminum and steel, have historically been subject to volatility. In 2007, consumption of steel and aluminum represented approximately 27% and 34%, respectively, of the Company's consolidated cost of products sold, excluding depreciation and amortization. The average market price for steel used in packaging increased approximately 4% and the average price of aluminum ingot on the London Metal Exchange increased approximately 3% during 2007. Supplier consolidations and recent government regulations provide additional uncertainty as to the level of prices at which the Company might be able to source raw materials in the future.

#### **Crown Holdings, Inc.**

As a result of raw material price increases, in 2007 the Company implemented price increases in most of its steel and aluminum product categories. There can be no assurance that the Company will be able to fully recover from its customers the impact of steel surcharges or steel and aluminum price increases. In addition, if the Company is unable to purchase steel or aluminum for a significant period of time, the Company's steel or aluminum-consuming operations would be disrupted. The Company is continuing to monitor steel and aluminum prices and the effect on its operations.

The Company may be subject to adverse price fluctuations and surcharges, including recent steel price increases discussed above, when purchasing raw materials. While certain, but not all, of the Company's contracts pass through raw material costs to customers, the Company may be unable to increase its prices to offset unexpected increases in raw material costs without suffering reductions in unit volume, revenue and operating income. In addition, any price increases may take effect after related cost increases, reducing operating income in the near term. If any of the Company's principal suppliers were to increase their prices significantly, impose substantial surcharges or were unable to meet its requirements for raw materials, either or both of its revenues or profits would decline.

In addition, the manufacturing facilities of the Company are dependent, in varying degrees, upon the availability of water and processed energy, such as natural gas and electricity. Certain of these energy sources may become difficult or impossible to obtain on acceptable terms due to external factors or may only be available at substantially increased costs, which could increase the Company's costs or interrupt its business.

***The loss of a major customer and/or customer consolidation could reduce the Company's net sales and profitability.***

Many of the Company's largest customers have acquired companies with similar or complementary product lines. This consolidation has increased the concentration of the Company's business with its largest customers. In many cases, such consolidation has been accompanied by pressure from customers for lower prices, reflecting the increase in the total volume of product purchased or the elimination of a price differential between the acquiring customer and the company acquired. Increased pricing pressures from the Company's customers may reduce the Company's net sales and net income.

The majority of the Company's sales are to companies that have leading market positions in the sale of packaged food, beverages and aerosol products to consumers. Although no one customer accounted for more than 10% of its net sales in 2007, 2006 or 2005, the loss of any of its major customers, a reduction in the purchasing levels of these customers or an adverse change in the terms of supply agreements with these customers could reduce the Company's net sales and net income. A continued consolidation of the Company's customers could exacerbate any such loss.

***The Company's business is seasonal and weather conditions could reduce the Company's net sales.***

The Company manufactures packaging primarily for the food and beverage can market. Its sales can be affected by weather conditions. Due principally to the seasonal nature of the soft drink, brewing, iced tea and other beverage industries, in which demand is stronger during the summer months, sales of the Company's products have varied and are expected to vary by quarter. Shipments in the U.S. and Europe are typically greater in the second and third quarters of the year. Unseasonably cool weather can reduce consumer demand for certain beverages packaged in its containers. In addition, poor weather conditions that reduce crop yields of packaged foods can decrease customer demand for its food containers.

***The Company is subject to costs and liabilities related to stringent environmental and health and safety standards.***

Laws and regulations relating to environmental protection and health and safety may increase the Company's costs of operating and reduce its profitability. The Company's operations are subject to numerous U.S. federal and state and non-U.S. laws and regulations governing the protection of the environment, including those relating to treatment, storage and disposal of waste, discharges into water, emissions into the atmosphere, remediation of soil and groundwater contamination and protection of employee health and safety. Future regulations may impose stricter environmental requirements affecting

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the Company's operations. For example, future restrictions in some jurisdictions on air emissions of volatile organic compounds and the use of certain paint and lacquering ingredients may require the Company to employ additional control equipment or process modifications. The Company's operations and properties, both in the U.S. and abroad, must comply with these laws and regulations.

A number of governmental authorities both in the U.S. and abroad have enacted, or are considering, legal requirements that would mandate certain rates of recycling, the use of recycled materials and/or limitations on certain kinds of packaging materials such as plastics. In addition, some companies with packaging needs have responded to such developments, and/or to perceived environmental concerns of consumers, by using containers made in whole or in part of recycled materials. Such developments may reduce the demand for some of the Company's products, and/or increase its costs. See "Management's Discussion and Analysis of Financial Condition and Results of Operations—Financial Position—Environmental Matters."

***The Company has written down a significant amount of goodwill, and a further writedown of goodwill would result in lower reported net income and a reduction of its net worth.***

During 2007, the Company recorded a charge of \$103 million to writedown the value of goodwill in its European metal vacuum closures business due to a decrease in projected operating results. Further impairment of the Company's goodwill would require additional write-offs of goodwill, which would reduce the Company's net income in the period of any such write-off. At December 31, 2007, the carrying value of the Company's goodwill was approximately \$2.2 billion. Under Statement of Financial Accounting Standards No. 142, "Goodwill and Other Intangible Assets," the Company is required to evaluate goodwill reflected on its balance sheet at least annually, or when circumstances indicate a potential impairment. If it determines that the goodwill is impaired, the Company would be required to write-off a portion or all of the goodwill.

***If the Company fails to retain key management and personnel the Company may be unable to implement its business plan.***

Members of the Company's senior management have extensive industry experience, and it would be difficult to find new personnel with comparable experience. Because the Company's business is highly specialized, we believe that it would also be difficult to replace the Company's key technical personnel. The Company believes that its future success depends, in large part, on its experienced senior management team. Losing the services of key members of its management team could limit the Company's ability to implement its business plan.

***A significant portion of the Company's workforce is unionized and labor disruptions could increase the Company's costs and prevent the Company from supplying its customers.***

A significant portion of the Company's workforce is unionized and a prolonged work stoppage or strike at any facility with unionized employees could increase its costs and prevent the Company from supplying its customers. In addition, upon the expiration of existing collective bargaining agreements, the Company may not reach new agreements without union action and any such new agreements may not be on terms satisfactory to the Company.

***If the Company fails to maintain an effective system of internal controls, the Company may not be able to accurately report financial results or prevent fraud.***

Effective internal controls are necessary to provide reliable financial reports and to assist in the effective prevention of fraud. Any inability to provide reliable financial reports or prevent fraud could harm the Company's business. The Company must annually evaluate its internal procedures to satisfy the requirements of Section 404 of the Sarbanes-Oxley Act of 2002, which requires management and auditors to assess the effectiveness of internal controls. If the Company fails to remedy or maintain the adequacy of its internal controls, as such standards are modified, supplemented or amended from time to time, the Company could be subject to regulatory scrutiny, civil or criminal penalties or shareholder litigation.



## **Crown Holdings, Inc.**

In addition, failure to maintain adequate internal controls could result in financial statements that do not accurately reflect the Company's financial condition. There can be no assurance that the Company will be able to complete the work necessary to fully comply with the requirements of the Sarbanes-Oxley Act or that the Company's management and external auditors will continue to conclude that the Company's internal controls are effective.

***The Company is subject to litigation risks which could negatively impact its operations and net income.***

The Company is subject to various lawsuits and claims with respect to matters such as governmental, environmental and employee benefits laws and regulations, securities, labor, and actions arising out of the normal course of business, in addition to asbestos-related litigation described in "Pending and future asbestos litigation and payments to settle asbestos-related claims could reduce the Company's cash flow and negatively impact its financial condition." The Company is currently unable to determine the total expense or possible loss, if any, that may ultimately be incurred in the resolution of such legal proceedings. Regardless of the ultimate outcome of such legal proceedings, they could result in significant diversion of time by the Company's management. The results of the Company's pending legal proceedings, including any potential settlements, are uncertain and the outcome of these disputes may decrease its cash available for operations and investment, restrict its operations or otherwise negatively impact its business, operating results, financial condition and cash flow.

### **ITEM 1B. UNRESOLVED STAFF COMMENTS**

There are no unresolved written comments that were received from the SEC staff 180 days or more before the end of the Company's fiscal year relating to its periodic or current reports under the Securities Exchange Act of 1934.

### **ITEM 2. PROPERTIES**

As of December 31, 2007, the Company operated 141 manufacturing facilities of which 25 were leased. The Company has three divisions, defined geographically, within which it manufactures and markets its products. The Americas Division has 53 operating facilities of which 11 are leased. Within the Americas Division, 33 facilities operate in the United States of which 8 are leased. The European Division has 75 operating facilities of which 11 are leased and the Asia-Pacific Division has 13 operating facilities of which 3 are leased. Some leases provide renewal options as well as various purchase options. The principal manufacturing facilities at December 31, 2007 are listed below and are grouped by product and by division.

Excluded from the list below are operating facilities in unconsolidated subsidiaries as well as service or support facilities. The service or support facilities include machine shop operations, plant operations dedicated to printing for cans and closures, coil shearing, coil coating and RD&E operations. Some operating facilities produce more than one product but have been presented below under the product with the largest contribution to sales.

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	<b>Americas</b>		<b>Europe</b>		<b>Asia-Pacific</b>
<b>Metal Packaging Beverage and Closures</b>	Lawrence, MA Kankakee, IL Crawfordsville, IN Mankato, MN Batesville, MS Dayton, OH Cheraw, SC Conroe, TX Fort Bend, TX Winchester, VA Olympia, WA	La Crosse, WI Worland, WY Cabreuva, Brazil Manaus, Brazil Calgary, Canada Montreal, Canada Weston, Canada Santafe de Bogota, Colombia Guadalajara, Mexico Carolina, Puerto Rico	Custines, France Korinthos, Greece Patras, Greece Amman, Jordan Dammam, Saudi Arabia Jeddah, Saudi Arabia Agoncillo, Spain	Sevilla, Spain El Agba, Tunisia Izmit, Turkey Dubai, UAE Bolcherby, UK Braunstone, UK	Phnom Penh, Cambodia Beijing, China Foshan, China Huizhou, China Shanghai, China Selangor, Malaysia Singapore Bangkadi, Thailand Hanoi, Vietnam Saigon, Vietnam
<b>Food and Closures</b>	Winter Garden, FL Pulaski Park, MD Owatonna, MN Omaha, NE Lancaster, OH Massillon, OH Mill Park, OH Portland, OR Connellsville, PA Hanover, PA Suffolk, VA	Seattle, WA Oshkosh, WI Bolton, Canada Chatham, Canada Concord, Canada Dorval, Canada Winnipeg, Canada Kingston, Jamaica La Villa, Mexico Barbados, West Indies Trinidad, West Indies	Brive, France Carpentras, France Concameau, France (2) Laon, France Nantes, France Outreau, France Perigueux, France Lubeck, Germany Mühlhof, Germany Seesen, Germany (2) Tema, Ghana Thessaloniki, Greece Nagykoros, Hungary Athy, Ireland Aprilia, Italy (2) Battipaglia, Italy Calerno S. Ilario d'Enza, Italy Nocera Superiore, Italy (2) Parma, Italy	Abidjan, Ivory Coast Toamasina, Madagascar Casablanca, Morocco Goleniow, Poland Pruszcz, Poland Alcochete, Portugal Timashevsk, Russia Dakar, Senegal Dunajska, Slovakia Bellville, South Africa Logrono, Spain Molina de Segura, Spain Sevilla, Spain Vigo, Spain Neath, UK Poole, UK Wisbech, UK Worcester, UK	Bangpoo, Thailand Haadyai, Thailand Samrong, Thailand
<b>Aerosol</b>	Alsip, IL Decatur, IL Fairbault, MN Belcamp, MD St. Laurent, Canada	Spartanburg, SC Toronto, Canada	Deurne, Belgium Splimberto, Italy Hoboken, Belgium Helsinki, Finland Chailion-sur-Seine, France Rouen, France Vourles, France Hilden, Germany Mechernich, Germany Chignolo Po, Italy	Mijdrecht, Netherlands Sutton, UK Hoorn, Netherlands Miravalles, Spain Montmelo, Spain Aesch, Switzerland Aintree, UK Carlisle, UK Mansfield, UK Newcastle, UK	
<b>Plastic Packaging</b>	Venancio Aires, Brazil Manaus, Brazil				
<b>Canmaking &amp; Spares</b>	Norwalk, CT		Shipley, UK		

The Company's manufacturing and support facilities are designed according to the requirements of the products to be manufactured. Therefore, the type of construction varies from plant to plant. Warehouse and delivery facilities are generally provided at each of the manufacturing locations, although the Company does lease outside warehouses.

Ongoing productivity improvements and cost reduction efforts in recent years have focused on upgrading and modernizing facilities to reduce costs, improve efficiency and productivity and phase out uncompetitive facilities. The Company has also opened new facilities to meet increases in market demand for its products. These actions reflect the Company's continued commitment to realign manufacturing facilities to maintain its competitive position in its markets. The Company continually reviews its operations and evaluates strategic opportunities. Further discussion of the Company's recent restructuring actions and divestitures is contained within "Management's Discussion and Analysis of Financial Condition and Results of Operations" under the captions "Provision for Restructuring," and "Provision for Asset Impairments and Loss/Gain on Sale of Assets," and under Note B, Note O and Note P to the consolidated financial statements.

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Utilization of any particular facility varies based upon demand for the product. While it is not possible to measure with any degree of certainty or uniformity the productive capacity of these facilities, management believes that, if necessary, production can be increased at several existing facilities through the addition of personnel, capital equipment and, in some facilities, square footage available for production. In addition, the Company may from time to time acquire additional facilities and/or dispose of existing facilities.

The Company's Americas and Corporate headquarters are in Philadelphia, Pennsylvania, its European headquarters is in Paris, France and its Asia-Pacific headquarters is in Singapore. The Company maintains research facilities in Alsip, Illinois and in Wantage, England. The Company's North American and European facilities, with certain exceptions, are subject to liens in favor of the lenders under its senior secured credit facility and under the Company's first priority senior secured notes.

### **ITEM 3. LEGAL PROCEEDINGS**

Crown Cork & Seal Company, Inc., a wholly-owned subsidiary of the Company ("Crown Cork"), is one of many defendants in a substantial number of lawsuits filed throughout the United States by persons alleging bodily injury as a result of exposure to asbestos. These claims arose from the insulation operations of a U.S. company, the majority of whose stock Crown Cork purchased in 1963. Approximately ninety days after the stock purchase, this U.S. company sold its insulation assets and was later merged into Crown Cork. At December 31, 2007, the accrual for pending and future asbestos claims that are probable and estimable was \$201 million.

In 2003, Crown Cork amended the retiree medical benefits that it had been providing to approximately 10,000 retirees pursuant to a series of collective bargaining agreements between Crown Cork and certain unions. Crown Cork has been a party to litigation in which the USWA and IAM unions and retirees claimed that the retiree medical benefits were vested and that the amendments breached the applicable collective bargaining agreements in violation of ERISA and the Labor Management Relations Act. In binding arbitration regarding the USWA matter, the arbitrator ruled in favor of the USWA parties with respect to employees who retired prior to the 1993 collective bargaining agreement and in favor of Crown Cork with respect to employees who retired under the 1993 and 1998 collective bargaining agreements. The parties are in the remedy stage of the arbitration with respect to employees who retired prior to the 1993 agreement. The Company believes the remedy is not expected to have a material adverse effect on its financial position. With respect to litigation involving Crown Cork and the IAM parties, a federal district court in Nebraska ruled that, pursuant to the collective bargaining agreement, the matter should be resolved through arbitration. Crown Cork appealed that decision to the Eighth Circuit Court of Appeals. The Eighth Circuit determined that the retiree medical benefits were not vested and that the Company has the unilateral right to modify or discontinue these benefits. The period for requesting review of the decision to the U.S. Supreme Court expired in December 2007 and the litigation with the IAM parties formally concluded in January 2008.

The Company has been identified by the Environmental Protection Agency as a potentially responsible party (along with others, in most cases) at a number of sites.

Further information on these matters and other legal proceedings is presented within "Management's Discussion and Analysis of Financial Condition and Results of Operations" under the captions "Provision for Asbestos" and "Environmental Matters" and under Note M and Note N to the consolidated financial statements.

### **ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS**

None.

### **EXECUTIVE OFFICERS OF THE REGISTRANT**

Information concerning the principal executive officers of the Company, including their ages and positions, is set forth in Part III, Item 10, "Directors, Executive Officers and Corporate Governance" of this Report.

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PART II

**ITEM 5. MARKET FOR REGISTRANT'S COMMON STOCK AND RELATED STOCKHOLDER MATTERS**

The Registrant's common stock is listed on the New York Stock Exchange. On February 22, 2008, there were 5,713 registered shareholders of the Registrant's common stock, including 1,636 participants in the Company's Employee Stock Purchase Plan. The market price of the Registrant's common stock at December 31, 2007 is set forth in Part II of this Report under Quarterly Data (unaudited). The foregoing information regarding the number of registered shareholders of common stock does not include persons holding stock through clearinghouse systems. Details regarding the Company's policy as to payment of cash dividends and repurchase of shares are set forth within Part II, Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations" under the caption "Common Stock and Other Shareholders' Equity/(Deficit)" and under Note Q to the consolidated financial statements. Information with respect to shares of common stock that may be issued under the Company's equity compensation plans is set forth in Part III, Item 12, "Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters," of this Report.

Issuer Purchases of Equity Securities

The following table provides information about the Company's purchase of equity securities during the year ended December 31, 2007.

	Total Number of Shares Purchased	Average Price Per Share	Total Number of Shares Purchased as Part of Publicly Announced Programs	Approximate Dollar Value of Shares that May Yet Be Purchased under the Programs As of the end of the Period (millions)
<u>2007</u>				
July	740,815	\$24.42	740,815	\$209
August	4,234,077	\$23.62	4,234,077	\$109
Total	4,974,892	\$23.74	4,974,892	\$109

In August 2007, the Company entered into an accelerated share repurchase program with BNP Paribas for approximately \$100 million. Pursuant to the agreement, the Company purchased 4,088,068 shares in the third quarter with the potential for receipt of additional shares upon completion of the transaction. The transaction was completed in November and resulted in the receipt of an additional 146,009 shares. The price for the shares was based on the Company's volume-weighted average stock price during the term of the transaction.

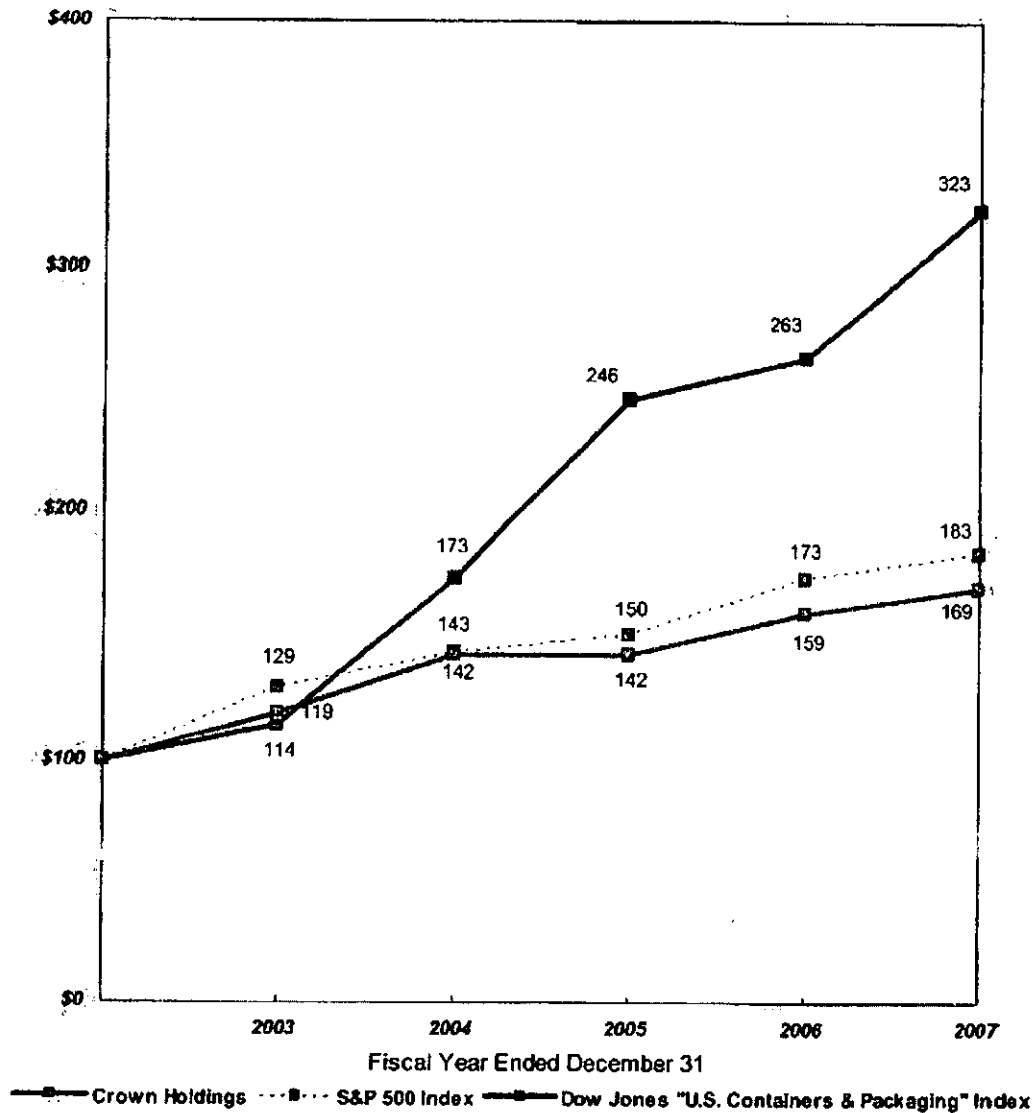
On February 28, 2008, the Company's Board of Directors authorized the repurchase of up to \$500 million of the Company's outstanding stock from time to time through December 31, 2010, in the open market or through privately negotiated transactions, subject to the terms of the Company's debt agreements, market conditions, the Company's ability to generate operating cash flow, alternative uses of operating cash flow (including the reduction of indebtedness), and other factors. This authorization replaces and supersedes all previous outstanding authorizations to repurchase shares. The Company is not obligated to acquire any shares of common stock and the share repurchase plan may be suspended or terminated at any time at the Company's discretion. The repurchased shares are expected to be used for the Company's stock-based benefit plans, as required, and for other general corporate purposes.

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**COMPARATIVE STOCK PERFORMANCE**

Comparison of Five-Year Cumulative Total Return (a)

Crown Holdings, Inc., S&P 500 Index, Dow Jones "U.S. Containers & Packaging" Index (b)



- (a) Assumes that the value of the investment in Crown Holdings, Inc. common stock and each index was \$100 on December 31, 2002 and that all dividends were reinvested.
- (b) Industry index is weighted by market capitalization and is comprised of Crown Holdings, Inc., AptarGroup, Ball, Bemis, MeadWestvaco, Owens-Illinois, Packaging Corp. of America, Pactiv, Sealed Air, Smurfit-Stone Container, Sonoco, Temple-Inland and West Pharmaceutical Services.

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**ITEM 6. SELECTED FINANCIAL DATA**

(in millions, except per share, ratios and other statistics)	2007	2006	2005	2004	2003
<b>Summary of Operations (1)</b>					
Net sales .....	\$ 7,727	\$ 6,982	\$ 6,675	\$ 6,285	\$ 5,767
Cost of products sold, excluding depreciation and amortization .....	6,471	5,863	5,527	5,235	4,856
Depreciation and amortization .....	229	227	237	247	265
Selling and administrative expense .....	385	316	339	307	280
Provision for asbestos .....	29	10	10	35	44
Provision for restructuring .....	20	15	13	6	12
Provision for asset impairments and loss/gain on sale of assets .....	100	( 64)	( 18)	31	65
Loss from early extinguishments of debt .....			383	39	12
Interest expense, net of interest income .....	304	274	352	353	368
Translation and exchange adjustments .....	( 12)	6	94	( 98)	( 207)
Income/(loss) from continuing operations before income taxes, minority interests and equity earnings .....	201	335	( 262)	130	72
Provision/(benefit) for income taxes .....	( 400)	( 62)	11	67	72
Minority interests and equity earnings .....	( 73)	( 55)	( 39)	( 27)	( 56)
Income/(loss) from continuing operations .....	\$ 528	\$ 342	(\$ 312)	\$ 36	(\$ 56)
<b>Financial Position at December 31 (2)</b>					
Working capital/(deficit) .....	\$ 151	\$ 157	(\$ 47)	\$ 306	\$ 120
Total assets .....	6,979	6,409	6,596	8,168	7,807
Total cash and cash equivalents .....	457	407	294	471	401
Total debt .....	3,437	3,541	3,403	3,872	3,939
Total debt, less cash and cash equivalents, to total capitalization (3) .....	89.8%	107.4%	98.1%	86.7%	90.5%
Minority interests .....	323	279	246	201	197
Shareholders' equity/(deficit) .....	15	( 494)	( 185)	320	174
<b>Common Share Data (dollars per share)</b>					
Earnings/(loss) from continuing operations:					
Basic .....	\$ 3.27	\$ 2.07	(\$ 1.88)	\$ 0.22	(\$ 0.34)
Diluted .....	3.19	2.01	( 1.88)	0.21	( 0.34)
Market price on December 31 .....	25.65	20.92	19.53	13.74	9.06
Book value based on year-end outstanding shares ..	0.09	( 3.04)	( 1.11)	1.93	1.05
Number of shares outstanding at year-end .....	159.8	162.7	166.7	165.6	165.0
Average shares outstanding					
Basic .....	161.3	165.5	165.9	165.3	164.7
Diluted .....	165.5	169.8	165.9	168.8	164.7
<b>Other</b>					
Capital expenditures .....	\$ 156	\$ 191	\$ 192	\$ 138	\$ 120
Number of employees .....	21,819	21,749	24,055	27,645	27,444

**Crown Holdings, Inc.**

**SELECTED FINANCIAL DATA** (Continued)

**Notes:**

- (1) The summary of operations data has been recast to exclude those businesses that were divested in 2005 and 2006 as discussed under Note B to the consolidated financial statements, and to reflect the change in method of accounting for U.S. inventories as discussed under Note G to the consolidated financial statements.

As discussed under Note C to the consolidated financial statements, the Company began consolidating its Middle East beverage can operations as of September 1, 2005. The summary of operations data, therefore, includes a full year of consolidated results for these operations in 2007 and 2006 and a partial year for 2005.

- (2) Working capital, total assets, total debt, less cash and cash equivalents, to total capitalization, shareholders' equity/(deficit), and book value per share have been recast to reflect the change in method of accounting for U.S. inventories as discussed under Note G to the consolidated financial statements.
- (3) Total capitalization consists of total debt, minority interests and shareholders' equity/(deficit), less cash and cash equivalents.

Crown Holdings, Inc.

**ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

(in millions, except per share, employee, shareholder and statistical data; per share earnings are quoted as diluted)

**INTRODUCTION**

This discussion summarizes the significant factors affecting the results of operations and financial condition of Crown Holdings, Inc. (the "Company") as of and during the three-year period ended December 31, 2007. This discussion should be read in conjunction with the consolidated financial statements included in this annual report.

As discussed in Note B to the consolidated financial statements, the Company sold its plastic closures business in 2005 and its European plastics and Americas health and beauty care businesses in 2006. The results of operations for prior periods used in the following discussion have been recast to report these businesses as discontinued operations.

During the fourth quarter of 2007, the Company changed its method of accounting for the cost of inventories in its United States operations from the last-in, first-out ("LIFO") method to the first-in, first-out ("FIFO") method. All results have been presented on a FIFO basis as if the accounting change had occurred as of January 1, 2005. See Note G to the consolidated financial statements for further information regarding the impact of the Company's change to the FIFO method.

**EXECUTIVE OVERVIEW**

The Company's principal areas of focus include improving segment income and cash flow from operations, and reducing debt. Segment income is defined by the Company as gross profit less selling and administrative expenses. See Note Y to the consolidated financial statements for a reconciliation of segment income from reportable segments to income/(loss) from continuing operations before income taxes, minority interests and equity earnings.

Improving segment income is primarily dependent on the Company's ability to increase revenues and manage costs. Key strategies for expanding sales include targeting geographic markets with strong growth potential, such as the Middle East, Asia, Latin America and southern and central Europe, improving selling prices in certain product lines and developing innovative packaging products using proprietary technology. The Company's cost control efforts focus on improving operating efficiencies and managing material and labor costs, including pension and other benefit costs.

The reduction of debt remains a principal strategic goal of the Company and is primarily dependent upon the Company's ability to generate cash flow from operations. In addition, the Company may consider divestitures from time to time, the proceeds of which may be used to reduce debt. The Company's total debt decreased by \$104 to \$3,437 at December 31, 2007 from \$3,541 at December 31, 2006. The decrease of \$104 was net of \$120 of increase due to the currency translation effect of debt denominated in foreign currencies. Cash balances increased by \$50 to \$457 at December 31, 2007 from \$407 at December 31, 2006, including \$31 of increase due to currency translation.

The Company may also from time to time consider transactions such as acquisitions (which may increase the Company's indebtedness or involve the issuance of Company securities), dispositions, refinancings or the repurchase of Company common stock pursuant to Board approved repurchase authorizations (under which \$109 was available at December 31, 2007, and \$500 was available as of February 28, 2008). Such transactions, including the repurchase of Company common stock, would be subject to compliance with the Company's debt agreements.

The cost of aluminum and steel, the primary raw materials used to manufacture the Company's products, has increased significantly in recent years. The Company attempts to pass-through these increased costs to its customers through provisions that adjust the selling prices to certain customers based on changes in the market price of the applicable raw material, or through surcharges where no such provision exists. However, there can be no assurance that the Company will be able to fully recover from its customers the impact of the increased aluminum and steel costs.



Crown Holdings, Inc.

RESULTS OF OPERATIONS

The foreign currency translation impacts referred to below are primarily due to changes in the euro and pound sterling in the European Division operating segments and the Canadian dollar in the Americas Division operating segments.

NET SALES

Net sales during 2007 were \$7,727, an increase of \$745 or 10.7% versus 2006 net sales of \$6,982. The increase in net sales during 2007 reflects higher sales unit volumes, the pass-through of material cost increases to customers and \$376 from the favorable impact of foreign currency translation.

Net sales from U.S. operations accounted for 27.2% of consolidated net sales in 2007, 28.3% in 2006 and 30.1% in 2005. Sales of beverage cans and ends accounted for 46.5% of net sales in 2007 compared to 44.5% of net sales in 2006 and 43.8% of net sales in 2005. Sales of food cans and ends accounted for 33.5% of net sales in 2007, 35.0% in 2006 and 35.3% in 2005.

Net sales in the Americas Beverage segment increased 9.4% from \$1,600 in 2006 to \$1,751 in 2007, primarily due to the pass-through of higher material costs to customers and recovery of sales unit volumes. Net sales during 2006 decreased 4.4% from \$1,674 in 2005, primarily due to lower sales unit volumes.

Net sales in the North America Food segment increased 3.4% from \$821 in 2006 to \$849 in 2007, and net sales during 2006 increased 6.3% from \$772 in 2005, primarily due to the pass-through of higher material costs to customers.

Net sales in the European Beverage segment increased 22.3% from \$1,174 in 2006 to \$1,436 in 2007, primarily due to increased sales unit volumes and the pass-through of higher material costs to customers, and also included \$69 of foreign currency translation. Net sales in 2006 increased 21.9% from \$963 in 2005, primarily due to \$117 from the full year consolidation of certain Middle East operations as discussed in Note C to the consolidated financial statements, and increased sales unit volumes.

Net sales in the European Food segment increased 5.6% from \$1,885 in 2006 to \$1,991 in 2007 primarily due to \$176 from the favorable impact of foreign currency translation, partially offset by a decline in sales unit volumes due to weather conditions and the resulting poor harvest. Net sales in 2006 increased 2.3% from \$1,842 in 2005, primarily due to the pass-through of higher material costs to customers, and also included \$17 from foreign currency translation.

Net sales in the European Specialty Packaging segment increased 7.7% from \$427 in 2006 to \$460 in 2007, primarily due to the favorable impact of foreign currency translation. Net sales in 2006 increased 5.2% from \$406 in 2005, primarily due to the pass-through of higher material costs to customers.

COST OF PRODUCTS SOLD (EXCLUDING DEPRECIATION AND AMORTIZATION)

Cost of products sold, excluding depreciation and amortization, was \$6,471 in 2007, an increase of 10.4% from \$5,863 in 2006. The increase in 2007 was primarily due to the impact of currency translation of \$316 and higher material costs, primarily aluminum and steel. Cost of products sold, excluding depreciation and amortization, of \$5,863 in 2006 increased 6.1% from \$5,527 in 2005. The increase in 2006 was primarily due to the impact of foreign currency translation of \$55 and higher material costs. As a percentage of net sales, cost of products sold, excluding depreciation and amortization, was 83.7% in 2007 compared to 84.0% in 2006 and 82.8% in 2005.

Steel suppliers have indicated that a shortage of raw materials to produce steel and increased global demand, primarily in China, have combined to create the need for steel price increases to their customers and have resulted in a tighter supply of steel which could require allocation among their steel purchasing customers.

## **Crown Holdings, Inc.**

As a result of the steel and aluminum price increases, the Company has implemented price increases to many of its customers. However, there can be no assurance that the Company will be able to fully recover from its customers the impact of price increases. In addition, if the Company is unable to purchase steel or aluminum for a significant period of time, its operations would be disrupted.

### **DEPRECIATION AND AMORTIZATION**

Depreciation and amortization during 2007 was \$229, an increase of \$2 from \$227 in 2006, after a decrease of \$10 from expense of \$237 in 2005. The increase in 2007 was primarily due to \$11 of foreign currency translation, offset by \$9 of decreases due to decreased capital spending in recent years. The decrease in 2006 was primarily due to decreased capital spending in recent years.

### **SELLING AND ADMINISTRATIVE EXPENSE**

Selling and administrative expense for 2007 was \$385, an increase of 21.8% from the 2006 expense of \$316, following a decrease of 6.8% from \$339 in 2005. The increase in 2007 was primarily due to higher incentive compensation costs and \$16 from the impact of foreign currency translation. The decrease in 2006 was primarily due to decreased incentive compensation costs.

### **SEGMENT INCOME**

Segment income in the Americas Beverage segment increased \$22 or 13.8% from \$160 in 2006 to \$182 in 2007, primarily due to higher sales unit volumes. Segment income in 2006 decreased \$37 or 18.8% from \$197 in 2005, primarily due to higher costs for freight, coatings and utilities, and also included \$13 due to lower sales unit volumes.

Segment income in the North America Food segment increased \$6 or 8.6% from \$70 in 2006 to \$76 in 2007, primarily due to cost reductions, including from prior year capital spending programs. Segment income in 2006 increased \$28 or 66.7% from \$42 in 2005, also primarily due to cost reductions, and included \$9 from increased sales unit volumes.

Segment income in the European Beverage segment increased \$63 or 51.6% from \$122 in 2006 to \$185 in 2007, primarily due to increased sales unit volumes. Segment income in 2006 decreased \$18 or 12.9% from \$140 in 2005, primarily due to higher material costs.

Segment income in the European Food segment decreased from \$174 in 2006 to \$173 in 2007, primarily due to lower sales unit volumes offset by the favorable impact of foreign currency translation. Segment income in 2006 decreased \$24 or 12.1% from \$198 in 2005, primarily due to higher material costs, partially offset by a reduction of \$11 in depreciation expense.

Segment income in the European Specialty Packaging segment decreased \$9 or 39.1% from \$23 in 2006 to \$14 in 2007, primarily due to lower sales unit volumes. Segment income in 2006 increased \$3 or 15.0% from \$20 in 2005, primarily due to improved selling prices.

### **PROVISION FOR ASBESTOS**

Crown Cork & Seal Company, Inc. is one of many defendants in a substantial number of lawsuits filed throughout the United States by persons alleging bodily injury as a result of exposure to asbestos. During 2007, 2006 and 2005 the Company recorded charges of \$29, \$10 and \$10, respectively, to increase its accrual for asbestos-related costs. See Note M to the consolidated financial statements for additional information regarding the provision for asbestos-related costs.

### **PROVISION FOR RESTRUCTURING**

During 2007, the Company provided a pre-tax charge of \$20 for restructuring costs, including \$7 for severance and other exit costs in the European Food segment, \$6 for the reclassification of cumulative translation adjustments to earnings from the closure of its operations in Indonesia, \$3 of corporate costs for the settlement of a labor dispute related to prior restructurings, and \$4 for other severance and exit costs. The actions are expected to save \$7 pre-tax on an annual basis when fully implemented.

## **Crown Holdings, Inc.**

During 2006, the Company provided a net pre-tax charge of \$15 for restructuring costs, including \$6 for severance costs in the European Food segment to close a plant, \$4 of corporate charges for the estimated settlement costs of a labor dispute related to prior restructurings, \$3 for severance costs in the European Specialty Packaging segment to reduce headcount, and \$4 for other severance and exit costs, partially offset by a reversal of \$2 of severance costs provided during 2005.

During 2005, the Company provided a pre-tax charge of \$13 for restructuring costs, including \$3 in the Americas Beverage segment for severance costs to reduce headcount at a plant, \$5 for severance costs to reduce headcount in a European aerosol can plant, \$2 for severance costs to reduce headcount in the U.S. research and development group, and \$3 for other severance and exit costs.

See Note O to the consolidated financial statements for additional information on these charges.

### **PROVISION FOR ASSET IMPAIRMENTS AND LOSS/GAIN ON SALE OF ASSETS**

During 2007, the Company recorded net pre-tax charges of \$100 for asset sales and asset impairments, primarily including a non-cash goodwill impairment charge of \$103 in the European metal vacuum closures business, partially offset by \$3 of other net gains from asset sales and impairment charges. The Company had net pre-tax gains of \$64 in 2006 and \$18 in 2005. See Note P to the consolidated financial statements for additional information.

### **LOSS FROM EARLY EXTINGUISHMENTS OF DEBT**

During 2005, the Company repaid its prior revolving credit facility and the majority of its second and third priority senior secured notes and recognized a loss of \$379 in connection with the transactions, consisting of \$278 of premiums and fees and the write-off of \$101 of unamortized fees and unamortized interest rate swap termination costs related to the refinanced facilities and notes. The Company recognized an additional loss of \$4 from early extinguishments of debt for premiums paid to purchase certain unsecured notes prior to their maturity.

See Note T to the consolidated financial statements for additional information on the early extinguishments of debt.

### **INTEREST EXPENSE**

Interest expense of \$318 in 2007 increased \$32 or 11.2% from 2006 interest expense of \$286 due to higher average short-term borrowing rates and foreign currency translation. Interest expense of \$286 in 2006 decreased \$75 or 20.8% from 2005 interest expense of \$361 primarily due to decreased borrowing rates from the Company's November 2005 refinancing.

Information about the Company's 2005 refinancing activities is summarized in the Liquidity and Capital Resources section of this discussion and in Notes S and T to the consolidated financial statements.

### **TRANSLATION AND EXCHANGE ADJUSTMENTS**

During 2007, 2006 and 2005, the Company recorded pre-tax foreign exchange gains of \$12, and losses of \$6 and \$94 respectively, primarily for certain subsidiaries that had unhedged currency exposure arising from intercompany debt obligations. The gains and losses are included in translation and exchange adjustments in the Consolidated Statements of Operations.

### **TAXES ON INCOME**

Taxes on income for 2007, 2006 and 2005 were benefits of \$400 and \$62, and a provision of \$11, respectively, against pre-tax income of \$201 in 2007, \$335 in 2006 and a pre-tax loss of \$262 in 2005.

The primary items causing the 2007 effective rate to differ from the 35.0% U.S. statutory rate were benefits of \$485 for valuation allowance adjustments and \$35 due to foreign income taxed at lower rates, and a cost of \$36 for the effect of a non-deductible goodwill impairment charge.

## **Crown Holdings, Inc.**

The primary items causing the 2006 effective rate to differ from the 35.0% U.S. statutory rate were benefits of \$121 related to a minimum pension liability adjustment, \$30 due to foreign income taxed at lower rates and \$13 for a reinvestment tax credit.

The primary items causing the 2005 effective rate to differ from the 35.0% U.S. statutory rate were an increase of \$108 due to valuation allowance adjustments and a decrease of \$20 due to foreign income taxed at lower rates.

See Note X to the consolidated financial statements for additional information regarding income taxes, including information regarding the Company's release of a portion of its U.S. deferred tax valuation allowances in the fourth quarter of 2007.

### **MINORITY INTERESTS AND EQUITY EARNINGS**

Minority interests' share of net income was \$73, \$55 and \$51 in 2007, 2006 and 2005, respectively. The increase in 2006 was primarily due to the consolidation of certain Middle East operations beginning in September 2005 as discussed in Note C to the consolidated financial statements, and the increase in 2007 was primarily due to higher profits in those operations.

Equity in earnings was less than \$1 in 2007 and 2006, and \$12 in 2005. The decrease in 2007 and 2006 compared to 2005 was primarily due to the consolidation of certain Middle East operations beginning in September 2005 as discussed in Note C to the consolidated financial statements.

### **DISCONTINUED OPERATIONS**

During 2006, the Company sold its remaining European plastics businesses and its Americas health and beauty care business for total proceeds of \$6, and recognized a loss of \$27 on these transactions. In 2005, the Company sold its plastic closures business for total proceeds of \$690, and recognized a loss of \$44 related to the transaction. The plastic closures assets that were sold included \$50 of cash and the Company paid \$13 in fees related to the sale, resulting in net proceeds of \$627. See Note B to the consolidated financial statements for further information on these divestitures.

## **FINANCIAL POSITION**

### **LIQUIDITY AND CAPITAL RESOURCES**

Cash and cash equivalents were \$457 at December 31, 2007 compared to \$407 and \$294 at December 31, 2006 and 2005, respectively. Cash provided by operating activities was \$509 in 2007 compared to \$355 in 2006 and cash used of \$122 in 2005. The significant change in cash from operations in 2007 compared to 2006 included improved operating results and an increase of \$118 from working capital reductions, partially offset by decreases of \$37 and \$19 for higher interest and tax payments, respectively.

Cash provided by operating activities increased by \$477 in 2006 compared to 2005, including increases of \$278 due to lower payments for debt refinancing premiums and fees, \$311 due to lower pension contributions, and \$133 due to lower net interest payments; partially offset by a decrease of \$165 in cash provided by working capital.

Payments for asbestos were \$26 in 2007, \$26 in 2006 and \$29 in 2005, and the Company expects to pay approximately \$26 in 2008. The Company contributed \$65 to its pension plans in 2007 and expects to contribute approximately \$67 in 2008.

Cash flow used by investing activities in 2007 was \$94 and included \$156 of capital expenditures offset by \$66 of proceeds from sales of property, plant and equipment. Capital expenditures were lower than the two previous years due to the completion in 2006 of an expansion of the Middle East operations. The proceeds of \$66 included \$16 from the 2007 sale of a property in Spain, and \$39 from the collection of a note due from the 2006 sale of a separate property in Spain.

## **Crown Holdings, Inc.**

Cash flow from investing activities in 2006 was a use of \$111 compared to a source of \$464 in 2005 as 2005 included \$627 of net proceeds from the sale of the plastic closures business as discussed in Note B to the consolidated financial statements. Capital expenditures of \$191 in 2006 and \$192 in 2005 were higher than recent years due to an expansion of the Middle East operations and, in 2005, additional spending in the plastic closures business prior to its divestiture.

Cash flow used for financing activities in 2007 increased from \$158 in 2006 to \$396 in 2007 as increased cash from operating activities in 2007 was used to repay debt.

Cash flow used for financing activities decreased from \$497 in 2005 to \$158 in 2006 as cash and business sale proceeds were used to repay debt in 2005, partially offset by an increase in stock repurchases from \$38 in 2005 to \$135 in 2006.

Cash flow from financing activities included dividends paid to minority interests of \$38, \$29 and \$45 in 2007, 2006 and 2005, respectively. These dividends were paid to the Company's joint venture partners or other shareholders primarily in the Company's consolidated non-wholly owned subsidiaries in South America, the Middle East and Asia.

The Company is highly leveraged. The ratio of total debt, less cash and cash equivalents, to total capitalization was 89.8%, 107.4% and 98.1% at December 31, 2007, 2006 and 2005, respectively. Total capitalization is defined by the Company as total debt, minority interests and shareholders' equity/(deficit), less cash and cash equivalents.

The Company funds its operations, debt services and other obligations primarily with cash flow from operations (including the accelerated receipt of cash under its receivables securitization and factoring facilities) and borrowings under its revolving credit facility. The Company may also consider divestitures from time to time, the proceeds of which may be used to reduce debt. The Company had no outstanding borrowings under its \$800 revolving credit facility at December 31, 2007 and had \$272 of securitized receivables. The Company also had \$78 of outstanding letters of credit under its revolving credit facility as of December 31, 2007, which reduced the amount of borrowings otherwise available under the credit facility to \$722.

The Company's debt agreements contain covenants that provide limits on the ability of the Company and its subsidiaries to, among other things, incur additional debt, pay dividends or repurchase capital stock, create liens, and engage in sale and leaseback transactions.

### **DEBT REFINANCINGS**

In August 2006, the Company entered into an amendment to its first priority credit facility providing for an additional \$200 first priority term loan facility due 2012. In December 2006, the Company paid \$15 to the holders of its first priority senior secured notes to amend the indenture to conform certain provisions to comparable provisions in the senior secured facility. Among other things, the amendments allow the Company to incur an additional \$200 of indebtedness collateralized by the same liens as the notes and to make \$100 of additional restricted payments of any type, including restricted payments for the repurchase or other acquisition or retirement for value of shares of Company common stock.

In 2005, the Company sold \$500 of 7.625% senior notes due 2013 and \$600 of 7.75% senior notes due 2015, and entered into an \$800 first priority revolving credit facility due 2011, and a first priority term loan facility due 2012 comprised of \$165 and €287 term loans. The proceeds from the refinancing were used to repay the Company's 2004 revolving credit facility and all but \$36 of its second and third priority senior secured notes, and to pay premiums, fees and expenses associated with the refinancing.

See Notes F, S and T to the consolidated financial statements for further information relating to the Company's refinancings and liquidity and capital resources.

**Crown Holdings, Inc.**

**CONTRACTUAL OBLIGATIONS**

Contractual obligations as of December 31, 2007 are summarized in the table below.

	Payments Due by Period						Total
	2008	2009	2010	2011	2012	2013 & after	
Long-term debt	\$ 38	\$ 33	\$ 36	\$ 739	\$ 747	\$1,804	\$3,397
Interest on long-term debt	242	240	238	235	188	138	1,281
Operating leases	65	52	42	32	27	65	283
Projected pension contributions	67						67
Postretirement obligations	45	35	35	36	36	189	376
Purchase obligations	2,567	559	343	3	2	1	3,475
Total contractual cash obligations	<u>\$3,024</u>	<u>\$919</u>	<u>\$694</u>	<u>\$1,045</u>	<u>\$1,000</u>	<u>\$2,197</u>	<u>\$8,879</u>

Interest on long-term debt is presented through 2013 only, represents the interest that will accrue by year, and is calculated based on interest rates in effect as of December 31, 2007. Interest on the credit facility borrowings is based on the outstanding balances as of December 31, 2007.

The projected pension contributions caption includes the minimum required contributions the Company expects to make in 2008 to fund its plans. The postretirement obligations caption includes the expected payments through 2017 to retirees for medical and life insurance coverage. The pension and postretirement projections require the use of numerous estimates and assumptions such as discount rates, rates of return on plan assets, compensation increases, health care cost increases, mortality and employee turnover. Accordingly, these amounts have been provided for one year only in the case of pensions and through 2017 in the case of postretirement costs.

Purchase obligations include commitments for raw materials and utilities at December 31, 2007. These commitments specify significant terms, including fixed or minimum quantities to be purchased; fixed, minimum or variable pricing provisions; and the approximate timing of transactions.

The obligations above exclude \$41 of unrecognized tax benefits for which the Company has recorded liabilities in accordance with FIN 48. These amounts have been excluded because the Company is unable to estimate when these amounts may be paid, if at all. See Note X to the consolidated financial statements for additional information on the Company's unrecognized tax benefits.

In order to further reduce leverage and future cash interest payments, the Company may from time to time repurchase outstanding notes and debentures with cash or exchange shares of its common stock for the Company's outstanding notes and debentures. The Company will evaluate any such transactions in light of then existing market conditions and may determine not to pursue such transactions.

**MARKET RISK**

In the normal course of business the Company is subject to risk from adverse fluctuations in foreign exchange and interest rates and commodity prices. The Company manages these risks through a program that includes the use of derivative financial instruments, primarily swaps and forwards. Counterparties to these contracts are major financial institutions. These instruments are not used for trading or speculative purposes. The extent to which the Company uses such instruments is dependent upon its access to them in the financial markets and its use of other methods, such as netting exposures for foreign exchange risk and establishing sales arrangements that permit the pass-through to customers of changes in commodity prices and foreign exchange rates, to effectively achieve its goal of risk reduction. The Company's objective in managing its exposure to market risk is to limit the impact on earnings and cash flow.

# Crown Holdings, Inc.

The Company manages foreign currency exposures at the operating unit level. Exposures that cannot be naturally offset within an operating unit are hedged with derivative financial instruments where possible and cost effective in the Company's judgment. Foreign exchange contracts which hedge defined exposures generally mature within twelve months. The Company does not generally hedge its exposure to translation gains or losses on its non-U.S. net assets. The Company, from time to time, enters into cross-currency swaps to hedge foreign currency exchange and interest rate risk for subsidiary debt which is denominated in currencies other than the functional currency of the subsidiary.

The table below provides information in U.S. dollars as of December 31, 2007 about the Company's forward currency exchange contracts. The majority of the contracts expire in 2008 and primarily hedge anticipated transactions, unrecognized firm commitments and intercompany debt and are recorded at fair value. The contracts with no amounts in the fair value column have a fair value of less than \$1.

<u>Buy/Sell</u>	<u>Contract Amount</u>	<u>Contract Fair Value gain/(loss)</u>	<u>Average Contractual Exchange Rate</u>
U.S. dollars/Euro	\$252	(\$ 2)	1.45
Euro/Sterling	193	14	1.47
Euro/Canadian dollars	116	( 1)	0.68
Sterling/Euro	72	( 2)	0.72
U.S. dollars/Canadian dollars	68		1.00
U.S. dollars/Thai Baht	36	( 4)	34.10
Euro/Polish Zloty	23	( 1)	3.72
Euro/Swiss Francs	14		0.60
U.S. dollars/Sterling	6		2.08
Singapore dollars/U.S. dollars	5		1.48
	<u>\$785</u>	<u>\$ 4</u>	

At December 31, 2007, the Company had additional contracts with a notional value of \$3 to purchase or sell other currencies, principally Asian. The aggregate fair value of these contracts was not material.

As of December 31, 2007, Crown European Holdings ("CEH"), a euro functional currency subsidiary, had U.S. dollar exposure on intercompany debt of \$580 owed to a U.S. subsidiary of the Company. As discussed in Note U to the consolidated financial statements, CEH has entered into cross-currency swaps as a hedge against \$460 of that exposure. The remaining exposure of \$120 is hedged by a forward currency exchange contract that is included in the table above.

The Company, from time to time, may manage its interest rate risk, primarily from fluctuations in variable interest rates, through interest rate swaps in order to balance its exposure between fixed and variable rates while attempting to minimize its interest costs. Interest rate swaps and other methods of mitigating interest rate risk may increase overall interest expense.

The table below presents principal cash flows and related interest rates by year of maturity for the Company's debt obligations. Variable interest rates disclosed represent the weighted average rates at December 31, 2007.

<u>Debt</u>	<u>Year of Maturity</u>					
	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>Thereafter</u>
Fixed rate .....	\$ 7	\$ 6	\$ 9	\$716	\$ 1	\$1,804
Average interest rate .....	6.0%	5.7%	6.5%	6.4%	5.4%	7.7%
Variable rate .....	\$ 76	\$ 27	\$ 27	\$ 23	\$746	
Average interest rate .....	6.3%	6.4%	6.3%	6.4%	6.6%	

The total future payments of \$3,442 at December 31, 2007 include \$2,220 of U.S. dollar-denominated debt, \$1,133 of euro-denominated debt and \$89 of debt denominated in other currencies.

## **Crown Holdings, Inc.**

Aluminum, a basic raw material of the Company, is subject to significant price fluctuations which may be hedged by the Company through forward commodity contracts. Current contracts involve aluminum forwards with a notional value of \$265 and a fair value loss of \$18. Any gains or losses realized from the use of these contracts are included in inventory to the extent that they are designated and effective as hedges of the anticipated purchases. The maturities of the commodity contracts closely correlate to the anticipated purchases of those commodities. These contracts are used in combination with commercial supply contracts with customers to manage exposure to price volatility.

### **CAPITAL EXPENDITURES**

Consolidated capital expenditures were \$156 in 2007 compared to \$191 in 2006. The decrease in 2007 was due to the completion in 2006 of an expansion of the Middle East operations.

Expenditures in the Americas Division were \$57 in 2007 and included spending of \$40 in Americas Beverage and \$9 in North America Food. Spending was primarily for cost reduction and equipment modernization.

Expenditures in the European Division were \$64 and included spending of \$13 in European Beverage, \$37 in European Food and \$9 in European Specialty Packaging. Spending was primarily for cost reduction and equipment modernization.

At December 31, 2007, the Company had approximately \$42 of capital commitments.

### **OFF-BALANCE SHEET ARRANGEMENTS**

The Company has certain guarantees and indemnification agreements that could require the payment of cash upon the occurrence of certain events. The guarantees and agreements are further discussed in Note N to the consolidated financial statements.

The Company also utilizes receivables securitization facilities and derivative financial instruments as further discussed in Note F and Note U, respectively, to the consolidated financial statements.

### **ENVIRONMENTAL MATTERS**

Compliance with the Company's Environmental Protection Policy is mandatory and the responsibility of each employee of the Company. The Company is committed to the protection of human health and the environment and is operating within the increasingly complex laws and regulations of national, state, and local environmental agencies or is taking action to achieve compliance with such laws and regulations. Environmental considerations are among the criteria by which the Company evaluates projects, products, processes and purchases.

The Company is dedicated to a long-term environmental protection program and has initiated and implemented many pollution prevention programs with an emphasis on source reduction. The Company continues to reduce the amount of metal used in the manufacture of steel and aluminum containers through "lightweighting" programs. The Company recycles nearly 100% of scrap aluminum, steel and copper used in its manufacturing processes. Many of the Company's programs for pollution prevention reduce operating costs and improve operating efficiencies.

The Company has been identified by the EPA as a potentially responsible party (along with others, in most cases) at a number of sites. The Company also has environmental issues at certain of its plants in the Americas and Europe. Actual expenditures for remediation were \$1 in each of the last three years. The Company's balance sheet reflects estimated discounted remediation liabilities of \$25 at December 31, 2007, including \$3 as a current liability. The Company records an environmental liability when it is probable that a liability has been incurred and the amount of the liability is reasonably estimable. The reserves at December 31, 2007 are primarily for asserted claims and are based on internal and external environmental studies. The Company expects that the liabilities will be paid out over the period of remediation for the applicable sites, which in some cases may exceed ten years.



## **Crown Holdings, Inc.**

Although the Company believes its reserves are adequate, there can be no assurance that the ultimate payments will not exceed the amount of the Company's reserves and will not have a material effect on the Company's consolidated results of operations, financial position and cash flow. Any possible loss or range of potential loss that may be incurred in excess of the recorded reserves cannot be estimated.

### **COMMON STOCK AND OTHER SHAREHOLDERS' EQUITY/(DEFICIT)**

Shareholders' equity/(deficit) was \$15 at December 31, 2007 compared to (\$494) and (\$185) at December 31, 2006 and 2005, respectively. The increase in 2007 was primarily due to net income of \$528, partially offset by \$118 of common share repurchases. The decrease in 2006 was primarily due to the adoption of FAS 158, as discussed in Note A to the consolidated financial statements, partially offset by net income of \$309 and minimum pension liability adjustments.

The Company's first priority revolving credit and term loan facilities and its first priority senior secured notes contain provisions that limit the repurchase of common stock and the payment of dividends subject to certain permitted payments or repurchases and exceptions. The Company acquired 4,974,892 shares, 7,046,378 shares and 2,101,809 shares of its common stock in 2007, 2006 and 2005, respectively.

Total common shares outstanding were 159,777,628 at December 31, 2007 and 162,711,471 at December 31, 2006.

On February 28, 2008, the Company's Board of Directors authorized the repurchase of up to \$500 of the Company's outstanding common stock from time to time through December 31, 2010, in the open market or through privately negotiated transactions, subject to the terms of the Company's debt agreements, market conditions, the Company's ability to generate operating cash flow, alternative uses of operating cash flow (including the reduction of indebtedness) and other factors. This authorization replaces and supersedes all previous outstanding authorizations to repurchase shares. The Company is not obligated to acquire any shares of common stock and the share repurchase plan may be suspended or terminated at any time at the Company's discretion.

The repurchased shares, if any, are expected to be used for the Company's stock-based benefit plans and to offset dilution resulting from the issuance of shares thereunder, and for other general corporate purposes.

The Board of Directors adopted a Shareholders' Rights Plan in 1995 and declared a dividend of one right for each outstanding share of common stock. In connection with the formation of Crown Holdings, Inc., the existing Shareholders' Rights Plan was terminated and a new Rights Agreement was entered into with terms substantially identical to the terminated plan, as amended in 2004. See Note Q to the consolidated financial statements for a description of the Shareholders' Rights Plan.

### **INFLATION**

Inflation has not had a significant impact on the Company over the past three years and the Company does not expect it to have a significant impact on the results of operations or financial condition in the foreseeable future.

### **CRITICAL ACCOUNTING POLICIES**

The accompanying consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America which require that management make numerous estimates and assumptions. Actual results could differ from those estimates and assumptions, impacting the reported results of operations and financial position of the Company. The Company's significant accounting policies are more fully described in Note A to the consolidated financial statements. Certain accounting policies, however, are considered to be critical in that (i) they are most important to the depiction of the Company's financial condition and results of operations and (ii) their application requires management's most subjective judgment in making estimates about the effect of matters that are inherently uncertain.

## Crown Holdings, Inc.

The Company's potential liability for asbestos cases is highly uncertain due to the difficulty of forecasting many factors, including the level of future claims, the rate of receipt of claims, the jurisdiction in which claims are filed, the terms of settlements of other defendants with asbestos-related liabilities, the bankruptcy filings of other defendants (which may result in additional claims and higher settlement demands for non-bankrupt defendants), the effect of the Georgia, South Carolina, Florida, Ohio, Mississippi, Texas and Pennsylvania asbestos legislation (including the validity and applicability of the Pennsylvania legislation to non-Pennsylvania jurisdictions, where the substantial majority of the Company's asbestos cases are filed). The Company reviews the adequacy of its accrual in the fourth quarter of each year, unless new information or circumstances indicate the review should be done prior to that time. See Note M to the consolidated financial statements for additional information on the Company's asbestos-related liabilities and assumptions.

The Company performs a goodwill impairment review in the fourth quarter of each year or when facts and circumstances indicate goodwill may be impaired. The impairment review involves a number of assumptions and judgments, including the calculation of fair value of the Company's identified reporting units. The Company uses a combination of market values for comparable businesses and discounted cash flow projections to calculate fair value. The Company's estimates of future cash flows include assumptions concerning future operating performance, economic conditions, and technological changes and may differ from actual future cash flows.

The Company performs an impairment review of its long-lived assets, primarily property, plant and equipment, when facts and circumstances indicate the carrying value may not be recoverable from its undiscounted cash flows. Any impairment loss is measured by comparing the carrying amount of the asset to its fair value. The Company's estimates of future cash flows involve assumptions concerning future operating performance, economic conditions and technological changes that may affect the future useful lives of the assets. These estimates may differ from actual cash flows or useful lives.

The Company records a valuation allowance to reduce its deferred tax assets when it is more likely than not that a portion of the tax assets will not be realized. The estimate of the amount that will not be realized requires the use of assumptions concerning the Company's future taxable income. The Company considers all sources of taxable income in estimating its valuation allowances, including taxable income in any available carry back period; the reversal of taxable temporary differences; tax-planning strategies; and taxable income expected to be generated in the future other than reversing temporary differences. Should the Company change its estimate of the amount of its deferred tax assets that it would be able to realize, an adjustment to the valuation allowance would result in an increase or decrease in tax expense in the period such a change in estimate was made. See Note X to the consolidated financial statements for additional information on the Company's assumptions and valuation allowances.

The Company recognizes the impact of a tax position if, in the Company's opinion, it is more likely than not that the position will be sustained on audit, based on the technical merits of that position. The tax position is measured at the largest amount of benefit that is greater than 50% likely of being realized upon ultimate settlement. The determination of whether the impact should be recognized, and the measurement of the impact, can require significant judgment and the Company's estimate may differ from the actual settlement amounts. See Note X to the consolidated financial statements for additional information on the Company's tax positions.

Accounting for pensions and postretirement benefit plans requires the use of estimates and assumptions regarding numerous factors, including discount rates, rates of return on plan assets, compensation increases, health care cost increases, mortality and employee turnover. Actual results may differ from the Company's actuarial assumptions, which may have an impact on the amount of reported expense or liability for pensions or postretirement benefits. The rate of return assumption is reviewed at each measurement date based on the pension plan's investment policies and an analysis of the historical returns of the capital markets, adjusted for current interest rates as appropriate. The U.S. plan's current asset allocation targets are 70% U.S. and international equities, 12% debt securities, 15% alternate investments and 3% real estate. The U.K. plan, which is the primary non-U.S. plan, has a current asset allocation policy of 21% U.K. and non-U.K. equities, 52% liability-matching debt securities, 19% alternate investments and 8% real estate. The discount rate for the U.S. plan was selected using a method that matches projected payouts from the plan with a zero-coupon double A bond yield curve. This yield curve

## Crown Holdings, Inc.

was constructed from the underlying bond price and yield data collected as of the plan's measurement date and is represented by a series of annualized, individual discount rates with durations ranging from six months to thirty years. Each discount rate in the curve was derived from an equal weighting of the double A or higher bond universe, apportioned into distinct maturity groups. These individual discount rates were then converted into a single equivalent discount rate. To assure that the resulting rates can be achieved by the plan, only bonds that satisfy certain criteria and are expected to remain available through the period of maturity of the plan benefits were used to develop the discount rate. The discount rate for the U.K. plan was determined based on the yields available on high quality sterling-denominated bonds whose proceeds are expected to match the projected pension benefit payments. The U.K. plan benefit payments are largely linked to future price inflation, and to select the discount rate the Company considers the yields available on index-linked gilts together with allowance for double A credit risk spreads and expectations for future inflation consistent with the benefit payment projections. A 0.25% change in the expected rates of return would change 2008 pension expense by approximately \$12. A 0.25% change in the discount rates from those used at December 31, 2007 would change 2008 pension expense by approximately \$9 and postretirement expense by approximately \$1. See Note W to the consolidated financial statements for additional information on pension and postretirement benefit obligations and assumptions.

Calculation of the estimated fair value of stock option awards requires the use of assumptions regarding a number of complex and subjective variables, including the expected term of the options, the annual risk-free interest rate over the options' expected term, the expected annual dividend yield on the underlying stock over the options' expected term, and the expected stock price volatility over the options' expected term. The Company generally bases its assumptions of option term and expected price volatility on historical data, but also considers other factors, such as vesting or expiration provisions in new awards that are inconsistent with past awards, that would make the historical data unreliable as a basis for future assumptions. Estimates of the fair value of stock options are not intended to predict actual future events or the value ultimately realized by employees who receive stock option awards, and subsequent events are not indicative of the reasonableness of the original estimates of fair value made by the Company under FAS 123(R). See Note A and Note R to the consolidated financial statements for additional disclosure of the Company's assumptions related to stock-based compensation.

### RECENT ACCOUNTING PRONOUNCEMENTS

In September 2006, the FASB issued SFAS No. 157 ("FAS 157"), "Fair Value Measurements." FAS 157 defines fair value, establishes a framework for measuring fair value in generally accepted accounting principles and expands disclosures about fair value measurements. Expanded disclosures include a tabular presentation of the fair value of a company's outstanding financial instruments according to a fair value hierarchy (i.e., levels 1, 2, 3 and 4, as defined) as well as enhanced disclosures regarding instruments in the level 3 category, including a reconciliation of the beginning and ending balances for each major category of assets and liabilities. FAS 157 emphasizes that fair value is a market-based measurement, not an entity-specific measurement, and states that a fair value measurement should be determined based on assumptions that market participants would use in pricing the asset or liability. FAS 157 is effective for the Company for financial assets and financial liabilities as of January 1, 2008 and the Company does not expect its adoption will have a material impact on the Company. FAS 157 is effective for the Company for nonfinancial assets and nonfinancial liabilities as of January 1, 2009.

In February 2007, the FASB issued SFAS No. 159 ("FAS 159"), "The Fair Value Option for Financial Assets and Financial Liabilities – Including an Amendment of FASB Statement No. 115." FAS 159 permits entities to choose to measure many financial instruments and certain other items at fair value, and establishes presentation and disclosure requirements designed to facilitate comparisons between entities that choose different measurement attributes for similar types of assets and liabilities. FAS 159 is effective for the Company as of January 1, 2008, and the Company does not expect its adoption will have a material impact on the Company's financial statements.

In December 2007, the FASB issued SFAS No. 141 (revised 2007) ("FAS 141(R)") "Business Combinations", which replaces FAS 141. FAS 141(R) retains the requirement of FAS 141 that business combinations be accounted for at fair value using the acquisition method, but changes the accounting for acquisitions in certain areas. Under FAS 141(R) acquisition costs will be expensed as incurred;

## Crown Holdings, Inc.

noncontrolling (minority) interests will be valued at fair value at the acquisition date; in-process research and development will be recorded at fair value as an indefinite-lived intangible asset at the acquisition date; restructuring costs associated with a business combination will generally be expensed subsequent to the acquisition date; and changes in deferred tax asset valuation allowances and income tax uncertainties after the acquisition date generally will affect income tax expense. FAS 141(R) is effective for the Company for all business combinations for which the acquisition date is on or after January 1, 2009, and the Company does not expect its adoption will have a material impact on the Company's financial statements at the date of adoption.

In December 2007, the FASB issued SFAS No. 160 ("FAS 160"), "Noncontrolling Interests in Consolidated Financial Statements – an amendment of ARB No. 51." FAS 160 requires the recognition of noncontrolling (minority) interests as equity in the consolidated financial statements, but separate from the parent's equity. The statement also requires that the amount of net income attributable to minority interests be included in consolidated net income on the face of the income statement. Assuming FAS 160 was adopted as of December 31, 2007, and using the amounts included in the Company's financial statements as of that date, the adoption of FAS 160 would increase the Company's shareholders' equity from \$15 to \$338 due to the inclusion of minority interests of \$323 in shareholders' equity. The effect on the income statement for the year ended December 31, 2007 would be to increase the Company's consolidated net income from \$528 to \$601 with the inclusion of the \$73 of net income attributable to minority interests, and the Company would separately disclose \$73 of consolidated net income attributable to minority interests.

### FORWARD LOOKING STATEMENTS

Statements in this Annual Report, including those in "Management's Discussion and Analysis of Financial Condition and Results of Operations," in the discussions of the provision for asbestos in Note M and other contingencies in Note N to the consolidated financial statements included in this Annual Report and in discussions incorporated by reference into this Annual Report (including, but not limited to, those in "Compensation Discussion and Analysis" in the Company's Proxy Statement), which are not historical facts (including any statements concerning plans and objectives of management for future operations or economic performance, or assumptions related thereto), are "forward-looking statements," within the meaning of the federal securities laws. In addition, the Company and its representatives may from time to time make other oral or written statements which are also "forward-looking statements." Forward-looking statements can be identified by words, such as "believes," "estimates," "anticipates," "expects" and other words of similar meaning in connection with a discussion of future operating or financial performance. These may include, among others, statements relating to (i) the Company's plans or objectives for future operations, products or financial performance, (ii) the Company's indebtedness and other contractual obligations, (iii) the impact of an economic downturn or growth in particular regions, (iv) anticipated uses of cash, (v) cost reduction efforts and expected savings, (vi) the Company's policies with respect to executive compensation and (vii) the expected outcome of contingencies, including with respect to asbestos-related litigation and pension and postretirement liabilities.

These forward-looking statements are made based upon management's expectations and beliefs concerning future events impacting the Company and, therefore, involve a number of risks and uncertainties. Management cautions that forward-looking statements are not guarantees and that actual results could differ materially from those expressed or implied in the forward-looking statements.

Important factors that could cause the actual results of operations or financial condition of the Company to differ include, but are not necessarily limited to, the ability of the Company to repay, refinance or restructure its short and long-term indebtedness on adequate terms and to comply with the terms of its agreements relating to debt; loss of customers, including the loss of any significant customers; the Company's ability to obtain and maintain adequate pricing for its products, including the impact on the Company's revenue, margins and market share and the ongoing impact of price increases; the impact of the Company's initiative to generate additional cash, including the reduction of working capital levels and capital spending; restrictions on the Company's use of available cash under its debt agreements; the ability of the Company to realize cost savings from its restructuring programs; changes in the availability and pricing of raw materials (including aluminum can sheet, steel tinplate, energy, water, inks and coatings) and the Company's ability to pass raw material and energy price increases and

## Crown Holdings, Inc.

surcharges through to its customers or to otherwise manage these commodity pricing risks; the financial condition of the Company's vendors and customers; the Company's ability to generate significant cash to meet its obligations and invest in its business and to maintain appropriate debt levels; the Company's ability to maintain adequate sources of capital and liquidity; the Company's ability to realize efficient capacity utilization and inventory levels and to innovate new designs and technologies for its products in a cost-effective manner; changes in consumer preferences for different packaging products; competitive pressures, including new product developments, industry overcapacity, or changes in competitors' pricing for products; the Company's ability to maintain and develop competitive technologies for the design and manufacture of products and to withstand competitive and legal challenges to the proprietary nature of such technology; the Company's ability to generate sufficient production capacity; the collectibility of receivables; changes in governmental regulations or enforcement practices, including with respect to environmental, health and safety matters and restrictions as to foreign investment or operation; weather conditions, including their effect on demand for beverages and on crop yields for fruits and vegetables stored in food containers; changes or differences in U.S. or international economic or political conditions, such as inflation or fluctuations in interest or foreign exchange rates (and the effectiveness of any currency or interest rate hedges) and tax rates; the Company's ability to realize deferred tax benefits; war or acts of terrorism that may disrupt the Company's production or the supply or pricing of raw materials, including in the Company's Middle East operations, impact the financial condition of customers or adversely affect the Company's ability to refinance or restructure its remaining indebtedness; the impact of existing and future legislation regarding refundable mandatory deposit laws in Europe for non-refillable beverage containers and the implementation of an effective return system; energy and natural resource costs; the cost and other effects of legal and administrative cases and proceedings, settlements and investigations; the outcome of asbestos-related litigation (including the number and size of future claims and the terms of settlements, and the impact of bankruptcy filings by other companies with asbestos-related liabilities, any of which could increase Crown Cork's asbestos-related costs over time, the adequacy of reserves established for asbestos-related liabilities, Crown Cork's ability to obtain resolution without payment of asbestos-related claims by persons alleging first exposure to asbestos after 1964, and the impact of Georgia, South Carolina, Florida, Ohio, Mississippi, Texas and Pennsylvania legislation dealing with asbestos liabilities and any litigation challenging that legislation and any future state or federal legislation dealing with asbestos liabilities), labor relations and workforce and social costs, including the Company's pension and postretirement obligations and other employee or retiree costs; investment performance of the Company's pension plans; costs and payments to certain of the Company's executive officers in connection with any termination of such executive officers or a change in control of the Company; costs and difficulties related to the integration of acquired businesses; changes in the Company's critical or other accounting policies or the assumptions underlying those policies; changes in the Company's strategic areas of focus; and the impact of any potential dispositions, acquisitions or other strategic realignments, which may impact the Company's operations, financial profile or levels of indebtedness.

Some of the factors noted above are discussed elsewhere in this Annual Report and prior Company filings with the Securities and Exchange Commission ("SEC"), including within Part I, Item 1A, "Risk Factors" in this Annual Report. In addition, other factors have been or may be discussed from time to time in the Company's SEC filings.

While the Company periodically reassesses material trends and uncertainties affecting the Company's results of operations and financial condition in connection with the preparation of "Management's Discussion and Analysis of Financial Condition and Results of Operations and certain other sections contained in the Company's quarterly, annual or other reports filed with the SEC, the Company does not intend to review or revise any particular forward-looking statement in light of future events.

### ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

The information set forth within Part II, Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations" under the caption "Market Risk" is incorporated herein by reference.

**Crown Holdings, Inc.**

**ITEM 8. FINANCIAL STATEMENTS, SUPPLEMENTARY DATA AND FINANCIAL STATEMENT SCHEDULE**

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**Crown Holdings, Inc.**

**Management's Report on Internal Control Over Financial Reporting**

Management is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Rule 13a-15(f) under the Securities Exchange Act of 1934, as amended). The Company's system of internal control over financial reporting is designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles.

Because of the inherent limitations, a system of internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Management assessed the effectiveness of the Company's internal control over financial reporting as of December 31, 2007. In making this assessment, management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO") in *Internal Control-Integrated Framework*. Based on its assessment, management has concluded that, as of December 31, 2007, the Company's internal control over financial reporting was effective based on those criteria.

The effectiveness of the Company's internal control over financial reporting as of December 31, 2007 has been audited by PricewaterhouseCoopers LLP, an independent registered public accounting firm, as stated in their report which appears herein.

**Crown Holdings, Inc.**

**Report of Independent Registered Public Accounting Firm**

To the Board of Directors and Shareholders of Crown Holdings, Inc:

In our opinion, the accompanying consolidated financial statements listed in the index appearing under Item 15(a)(1) present fairly, in all material respects, the financial position of Crown Holdings, Inc. and its subsidiaries at December 31, 2007 and December 31, 2006, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2007 in conformity with accounting principles generally accepted in the United States of America. In addition, in our opinion, the financial statement schedule listed in the index appearing under Item 15(a)(2) presents fairly, in all material respects, the information set forth therein when read in conjunction with the related consolidated financial statements. Also in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2007, based on criteria established in *Internal Control - Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). The Company's management is responsible for these financial statements, for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management's Report on Internal Control Over Financial Reporting. Our responsibility is to express opinions on these financial statements and on the Company's internal control over financial reporting based on our integrated audits. We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement and whether effective internal control over financial reporting was maintained in all material respects. Our audits of the financial statements included examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audits also included performing such other procedures as we considered necessary in the circumstances. We believe that our audits provide a reasonable basis for our opinions.

As discussed in Note A to the consolidated financial statements, the Company changed the manner in which it accounts for share-based compensation as of January 1, 2006, the manner in which it accounts for defined benefit pension and other postretirement plans as of December 31, 2006, the manner in which it accounts for uncertain tax positions as of January 1, 2007, and its method of accounting for inventory in the fourth quarter of 2007.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

PricewaterhouseCoopers LLP  
Philadelphia, Pennsylvania  
February 28, 2008



**Crown Holdings, Inc.**

**CONSOLIDATED STATEMENTS OF OPERATIONS**

(in millions, except per share amounts)

For the years ended December 31	2007	2006	2005
<b>Net sales</b> .....	<u>\$ 7,727</u>	<u>\$ 6,982</u>	<u>\$ 6,675</u>
Cost of products sold, excluding depreciation and amortization...	6,471	5,863	5,527
Depreciation and amortization.....	<u>229</u>	<u>227</u>	<u>237</u>
<b>Gross profit</b> .....	<u>1,027</u>	<u>892</u>	<u>911</u>
Selling and administrative expense.....	385	316	339
Provision for asbestos... <i>Note M</i> .....	29	10	10
Provision for restructuring... <i>Note O</i> .....	20	15	13
Provision for asset impairments and loss/gain on sale of assets... <i>Note P</i> .....	100	( 64)	( 18)
Loss from early extinguishments of debt... <i>Note T</i> .....			383
Interest expense.....	318	286	361
Interest income.....	( 14)	( 12)	( 9)
Translation and exchange adjustments... <i>Note S</i> .....	( 12)	6	94
<b>Income/(loss) from continuing operations before income taxes, minority interests and equity earnings</b> .....	201	335	( 262)
Provision/(benefit) for income taxes... <i>Note X</i> .....	( 400)	( 62)	11
Minority interests.....	( 73)	( 55)	( 51)
Equity earnings.....			12
<b>Income/(loss) from continuing operations</b> .....	<u>528</u>	<u>342</u>	<u>( 312)</u>
<b>Discontinued operations</b> ... <i>Note B</i> .....			
Loss before income taxes.....		( 34)	( 21)
Provision/(benefit) for income taxes.....		( 1)	21
<b>Loss from discontinued operations</b> .....		<u>( 33)</u>	<u>( 42)</u>
<b>Net income/(loss)</b> .....	<u>\$ 528</u>	<u>\$ 309</u>	<u>(\$ 354)</u>
<b>Per common share data: Note V</b>			
<b>Earnings/(loss)</b>			
Basic – Continuing operations.....	\$ 3.27	\$ 2.07	(\$ 1.88)
Discontinued operations.....		( 0.20)	( 0.25)
	<u>\$ 3.27</u>	<u>\$ 1.87</u>	<u>(\$ 2.13)</u>
Diluted – Continuing operations.....	\$ 3.19	\$ 2.01	(\$ 1.88)
Discontinued operations.....		( 0.19)	( 0.25)
	<u>\$ 3.19</u>	<u>\$ 1.82</u>	<u>(\$ 2.13)</u>

The accompanying notes are an integral part of these consolidated financial statements.

Crown Holdings, Inc.

**CONSOLIDATED BALANCE SHEETS**

(in millions, except share data)

December 31	2007	2006
<b>Assets</b>		
<b>Current assets</b>		
Cash and cash equivalents .....	\$ 457	\$ 407
Receivables, net... <i>Note F</i> .....	673	689
Inventories... <i>Note G</i> .....	1,030	957
Prepaid expenses and other current assets .....	74	60
<b>Total current assets</b> .....	<b>2,234</b>	<b>2,113</b>
Goodwill... <i>Note D</i> .....	2,199	2,185
Property, plant and equipment, net... <i>Note H</i> .....	1,604	1,608
Other non-current assets... <i>Note I</i> .....	942	503
<b>Total</b> .....	<b>\$ 6,979</b>	<b>\$ 6,409</b>
<b>Liabilities and shareholders' equity/(deficit)</b>		
<b>Current liabilities</b>		
Short-term debt... <i>Note S</i> .....	\$ 45	\$ 78
Current maturities of long-term debt... <i>Note S</i> .....	38	43
Accounts payable and accrued liabilities... <i>Note J</i> .....	2,000	1,835
<b>Total current liabilities</b> .....	<b>2,083</b>	<b>1,956</b>
Long-term debt, excluding current maturities... <i>Note S</i> .....	3,354	3,420
Postretirement and pension liabilities... <i>Note W</i> .....	625	749
Other non-current liabilities... <i>Note K</i> .....	579	499
Minority interests .....	323	279
Commitments and contingent liabilities... <i>Notes L and N</i> .....		
<b>Shareholders' equity/(deficit)</b>		
Preferred stock, authorized: 30,000,000; none issued... <i>Note Q</i> .....		
Common stock, par value: \$5.00; authorized: 500,000,000 shares; issued 185,744,072 shares... <i>Note Q</i> .....	929	929
Additional paid-in capital .....	1,516	1,589
Accumulated deficit .....	( 654)	( 1,166)
Accumulated other comprehensive loss... <i>Note E</i> .....	( 1,646)	( 1,731)
Treasury stock at par value (2007 - 25,966,444 shares; 2006 - 23,032,601 shares) .....	( 130)	( 115)
<b>Total shareholders' equity/(deficit)</b> .....	<b>15</b>	<b>( 494)</b>
<b>Total</b> .....	<b>\$ 6,979</b>	<b>\$ 6,409</b>

The accompanying notes are an integral part of these consolidated financial statements.

Crown Holdings, Inc.

**CONSOLIDATED STATEMENTS OF CASH FLOWS**

(in millions)

For the years ended December 31	2007	2006	2005
<b>Cash flows from operating activities</b>			
Net income/(loss).....	\$ 528	\$ 309	(\$ 354)
Adjustments to reconcile net income/(loss) to net cash provided by/(used for) operating activities:			
Depreciation and amortization.....	229	230	282
(Gain)/loss from translation and foreign exchange.....	( 12)	6	94
Provision for asset impairments and loss/gain on sale of assets.....	100	( 64)	10
Write-off of deferred financing fees...Note T.....			101
Pension expense.....	10	37	85
Pension contributions.....	( 65)	( 90)	( 401)
Stock-based compensation.....	14	11	3
Deferred income taxes.....	( 486)	( 110)	( 35)
Minority interests and equity earnings.....	73	55	39
Changes in assets and liabilities, net of effect of divested businesses:			
Receivables.....	68	39	72
Inventories.....	( 19)	( 66)	( 36)
Accounts payable and accrued liabilities.....	61	19	121
Asbestos liabilities.....	3	( 16)	( 19)
Other.....	5	( 5)	( 84)
<b>Net cash provided by/(used for) operating activities</b> .....	<u>509</u>	<u>355</u>	<u>( 122)</u>
<b>Cash flows from investing activities</b>			
Capital expenditures.....	( 156)	( 191)	( 192)
Proceeds from sale of businesses, net of cash sold...Note B.....	7	7	627
Proceeds from sale of property, plant and equipment.....	66	81	40
Other.....	( 11)	( 8)	( 11)
<b>Net cash provided by/(used for) investing activities</b> .....	<u>( 94)</u>	<u>( 111)</u>	<u>464</u>
<b>Cash flows from financing activities</b>			
Proceeds from long-term debt.....	48	232	1,616
Payments of long-term debt.....	( 55)	( 143)	( 2,268)
Net change in revolving credit facility and short-term debt.....	( 217)	( 81)	248
Debt issue costs.....		( 4)	( 26)
Common stock issued.....	14	18	16
Common stock repurchased.....	( 118)	( 135)	( 38)
Dividends paid to minority interests.....	( 38)	( 29)	( 45)
Other.....	( 30)	( 16)	
<b>Net cash used for financing activities</b> .....	<u>( 200)</u>	<u>( 158)</u>	<u>( 497)</u>
Effect of exchange rate changes on cash and cash equivalents.....	31	27	( 22)
Net change in cash and cash equivalents.....	50	113	( 177)
Cash and cash equivalents at January 1.....	407	294	471
<b>Cash and cash equivalents at December 31</b> .....	<u>\$ 457</u>	<u>\$ 407</u>	<u>\$ 294</u>

The accompanying notes are an integral part of these consolidated financial statements.

**Crown Holdings, Inc.**

**CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY/(DEFICIT) AND COMPREHENSIVE INCOME/(LOSS)**  
(in millions, except share data)

	Comprehensive Income/(Loss)	Common Stock	Paid-in Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss	Treasury Stock	Total
<b>Balance January 1, 2005</b>		\$929	\$1,699	(\$1,121)	(\$1,087)	(\$100)	\$ 320
Net loss	(\$ 354)			( 354)			( 354)
Derivatives qualifying as hedges	( 10)				( 10)		( 10)
Translation adjustments	( 187)				( 187)		( 187)
Translation adjustments – disposition of foreign investments	( 5)				( 5)		( 5)
Minimum pension liability adjustments, net of tax of \$19	76				76		76
Available for sale securities	( 6)				( 6)		( 6)
<b>Comprehensive loss</b>	<b>(\$ 486)</b>						
Restricted stock awarded: 604,196 common shares			( 3)			3	
Stock-based compensation			3				3
Stock issued – benefit plans: 2,650,136 common shares			3			13	16
Stock repurchased: 2,101,809 common shares			( 28)			( 10)	( 38)
<b>Balance December 31, 2005</b>		<b>929</b>	<b>1,674</b>	<b>( 1,475)</b>	<b>( 1,219)</b>	<b>( 94)</b>	<b>( 185)</b>
Net income	\$ 309			309			309
Derivatives qualifying as hedges	2				2		2
Translation adjustments	133				133		133
Minimum pension liability adjustments, net of tax of \$2	710				710		710
Minimum pension tax adjustment – Note X	( 121)				( 121)		( 121)
Available for sale securities	5				5		5
<b>Comprehensive income</b>	<b>\$1,038</b>						
Adoption of FAS 158 – Note A					( 1,241)		( 1,241)
Restricted stock awarded: 422,584 common shares			( 2)			2	
Stock-based compensation			11				11
Stock issued – benefit plans: 2,623,184 common shares			5			13	18
Stock repurchased: 7,046,378 common shares			( 99)			( 36)	( 135)
<b>Balance December 31, 2006</b>		<b>929</b>	<b>1,589</b>	<b>( 1,166)</b>	<b>( 1,731)</b>	<b>( 115)</b>	<b>( 494)</b>
Net income	\$ 528			528			528
Derivatives qualifying as hedges	( 7)				( 7)		( 7)
Translation adjustments	25				25		25
Translation adjustments – disposition of foreign investments	6				6		6
Amortization of net loss and prior service cost included in net periodic pension and postretirement cost, net of tax of \$19	47				47		47
Net loss and prior service cost adjustments, net of tax of \$62	18				18		18
Available for sale securities	( 4)				( 4)		( 4)
<b>Comprehensive income</b>	<b>\$ 613</b>						
Adoption of FIN 48 – Note A				( 16)			( 16)
Restricted stock awarded: 394,221 common shares			( 2)			2	
Stock-based compensation			16				16
Stock issued – benefit plans: 1,646,828 common shares			6			8	14
Stock repurchased: 4,974,892 common shares			( 93)			( 25)	( 118)
<b>Balance December 31, 2007</b>		<b>\$929</b>	<b>\$1,516</b>	<b>(\$ 654)</b>	<b>(\$1,646)</b>	<b>(\$130)</b>	<b>\$ 15</b>

The accompanying notes are an integral part of these consolidated financial statements.

**Crown Holdings, Inc.**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

(in millions, except share, per share, employee and statistical data)

**A. Summary of Significant Accounting Policies**

**Business and Principles of Consolidation.** The consolidated financial statements include the accounts of Crown Holdings, Inc. (the "Company") and its consolidated subsidiary companies (where the context requires, the "Company" shall include reference to the Company and its consolidated subsidiary companies).

The Company manufactures and sells metal containers, metal closures, and canmaking equipment. These products are manufactured in the Company's plants both within and outside the United States and are sold through the Company's sales organization to the soft drink, food, citrus, brewing, household products, personal care and various other industries. The financial statements were prepared in conformity with accounting principles generally accepted in the United States of America and reflect management's estimates and assumptions. Actual results could differ from those estimates, impacting reported results of operations and financial position. All intercompany accounts and transactions are eliminated in consolidation. In deciding which entities should be reported on a consolidated basis, the Company first determines whether the entity is a variable interest entity ("VIE") as defined in FASB Interpretation No. 46 ("FIN 46"). If an entity meets the criteria for VIE status, the Company consolidates that entity if the Company has the obligation to absorb more than 50% of the entity's expected losses or receive more than 50% of the entity's expected residual returns. If an entity does not meet the criteria for VIE status, the Company consolidates those in which it has effective control, which includes certain subsidiaries that are not majority-owned. Certain of the Company's joint venture agreements, including those discussed in Note C, contain provisions in which the Company would surrender certain decision-making rights upon a change in control of the Company. Accordingly, consolidation of these operations may no longer be appropriate subsequent to a change in control of the Company, as defined in the joint venture agreements. Investments in companies in which the Company does not have effective control, but has the ability to exercise significant influence over operating and financial policies, are accounted for by the equity method. Investments in securities where the Company does not have the ability to exercise significant influence over operating and financial policies, and whose fair value is readily determinable such as those listed on a securities exchange, are referred to as "available for sale securities" and reported at their fair value with unrealized gains and losses reported in accumulated other comprehensive income in shareholders' equity. Other investments are carried at cost.

**Foreign Currency Translation.** For non-U.S. subsidiaries which operate in a local currency environment, assets and liabilities are translated into U.S. dollars at year-end exchange rates. Income, expense and cash flow items are translated at average exchange rates prevailing during the year. Translation adjustments for these subsidiaries are accumulated as a separate component of accumulated other comprehensive income in shareholders' equity. For non-U.S. subsidiaries that use a U.S. dollar functional currency, local currency inventories and property, plant and equipment are translated into U.S. dollars at approximate rates prevailing when acquired; all other assets and liabilities are translated at year-end exchange rates. Inventories charged to cost of sales and depreciation are remeasured at historical rates; all other income and expense items are translated at average exchange rates prevailing during the year. Gains and losses which result from remeasurement are included in earnings.

**Revenue Recognition.** Revenue is recognized from product sales when the goods are shipped and the title and risk of loss pass to the customer. Provisions for discounts and rebates to customers, returns, and other adjustments are estimated and provided for in the period that the related sales are recorded. Taxes collected from customers and remitted to governmental authorities are excluded from net sales. Shipping and handling fees and costs are reported as cost of products sold.

**Stock-Based Compensation.** The Company has stock-based employee compensation plans that are currently comprised of fixed stock options and restricted stock awards. Effective January 1, 2006, the Company adopted Statement of Financial Accounting Standards ("SFAS") No. 123 (revised 2004) ("FAS 123(R)", "Share Based Payment." The Company is using the modified prospective transition method of FAS 123(R) whereby compensation expense for all nonvested stock awards, measured by the grant-date fair value of the awards, will be charged to earnings prospectively over the remaining vesting period

# Crown Holdings, Inc.

based on the estimated number of awards that are expected to vest. Similarly, compensation expense for all future awards will be recognized over the vesting period based on the grant-date fair value and the estimated number of awards that are expected to vest. Compensation expense is recognized over the vesting period on a straight-line basis. Valuation of awards granted prior to the adoption of the standard were calculated using the Black-Scholes option pricing model and the Company expects to use the same model for valuing future awards.

The following table illustrates the effect on net income and earnings per share as if the Company had applied the fair value recognition provisions of FAS 123(R) to stock options in 2005.

	2005
Net loss, as reported	(\$354)
Add: Stock-based compensation expense for restricted stock already included in net loss as reported, net of tax	3
Deduct: Proforma stock-based compensation expense for stock options and restricted stock, net of tax	( 13)
Proforma net loss	<u>(\$364)</u>
Loss per share:	
Basic -- as reported	<u>(\$2.13)</u>
Diluted -- as reported	<u>(\$2.13)</u>
Basic -- proforma	<u>(\$2.19)</u>
Diluted -- proforma	<u>(\$2.19)</u>

Stock-based compensation expense was \$14 (\$12 net of tax) and \$11 (\$11 net of tax) in 2007 and 2006, respectively.

**Cash and Cash Equivalents.** Cash equivalents represent investments with maturities of three months or less from the time of purchase and are carried at cost which approximates fair value because of the short maturity of those instruments. Outstanding checks in excess of funds on deposit are included in accounts payable.

**Accounts Receivable and Allowance for Doubtful Accounts.** Trade accounts receivable are recorded at the invoiced amount and do not bear interest. The allowance for doubtful accounts is the best estimate of the amount of probable credit losses in the existing accounts receivable. The allowance is determined based on a review of individual accounts for collectibility, generally focusing on those accounts that are past due. The current year expense to adjust the allowance for doubtful accounts is recorded within cost of products sold in the consolidated statements of operations. Account balances are charged against the allowance when it is probable the receivable will not be recovered.

**Inventory Valuation.** Inventories are stated at the lower of cost or market, with cost for U.S. inventories principally determined under the first-in, first-out ("FIFO") method. Non-U.S. inventories are principally determined under the average cost method. As discussed in Note G, during the fourth quarter of 2007 the Company changed the method of accounting for its U.S. inventories from the last-in, first-out ("LIFO") method to the FIFO method.

**Property, Plant and Equipment.** Property, plant and equipment ("PP&E") is carried at cost less accumulated depreciation and includes expenditures for new facilities and equipment and those costs which substantially increase the useful lives or capacity of existing PP&E. Cost of constructed assets includes capitalized interest incurred during the construction and development period. Maintenance and repairs, including labor and material costs for planned major maintenance such as annual production line overhauls, are expensed as incurred. When PP&E is retired or otherwise disposed, the net carrying amount is eliminated with any gain or loss on disposition recognized in earnings at that time.

## **Crown Holdings, Inc.**

Depreciation and amortization are provided on a straight-line basis over the estimated useful lives of the assets. The range of estimated economic lives in years assigned to each significant fixed asset category is as follows: Land Improvements-25; Buildings and Building Improvements-25 to 40; Machinery and Equipment-3 to 14.

**Intangibles.** Goodwill, representing the excess of the cost over the net tangible and identifiable intangible assets of acquired businesses, and other intangible assets are stated at cost. Potential impairment of goodwill is identified by comparing the fair value of a reporting unit, using a combination of market values for comparable businesses and discounted cash flow projections, to its carrying value including goodwill. Goodwill was allocated to the reporting units at the time of the acquisition based on the relative fair value of the reporting units. If the carrying value of the reporting unit exceeds its fair value, any impairment loss is measured by comparing the carrying value of the reporting unit's goodwill to its implied fair value. Goodwill is tested for impairment in the fourth quarter of each year or when facts and circumstances indicate goodwill may be impaired.

**Impairment or Disposal of Long-Lived Assets.** In the event that facts and circumstances indicate that the carrying value of long-lived assets, primarily PP&E and certain identifiable intangible assets with finite lives, may be impaired, the Company performs a recoverability evaluation. If the evaluation indicates that the carrying value of an asset is not recoverable from its undiscounted cash flows, an impairment loss is measured by comparing the carrying value of the asset to its fair value, based on discounted cash flows. Long-lived assets classified as held for sale are presented in the balance sheet at the lower of their carrying value or fair value less cost to sell.

**Taxes on Income.** The provision for income taxes is determined using the asset and liability approach. Deferred taxes represent the future expected tax consequences of differences between the financial reporting and tax bases of assets and liabilities based upon enacted tax rates and laws. Valuation allowances are recorded to reduce deferred tax assets when it is more likely than not that a tax benefit will not be realized.

The with-and-without approach is used to account for utilization of windfall tax benefits arising from the Company's stock-based compensation plans and only the direct impact of awards is considered when calculating the amount of windfalls or shortfalls. Investment tax credits earned in connection with capital expenditures are recorded as a reduction in income taxes in the year the credit arises. Income tax-related interest is reported as interest expense and penalties are reported as income tax expense.

**Derivatives and Hedging.** All outstanding derivative financial instruments are recognized in the balance sheet at their fair values. The impact on earnings from recognizing the fair values of these instruments depends on their intended use, their hedge designation and their effectiveness in offsetting changes in the fair values of the exposures they are hedging. Changes in the fair values of instruments designated to reduce or eliminate adverse fluctuations in the fair values of recognized assets and liabilities and unrecognized firm commitments are reported currently in earnings along with changes in the fair values of the hedged items. Changes in the effective portions of the fair values of instruments used to reduce or eliminate adverse fluctuations in cash flows of anticipated or forecasted transactions are reported in shareholders' equity as a component of accumulated other comprehensive income. Amounts in accumulated other comprehensive income are reclassified to earnings when the related hedged items impact earnings or the anticipated transactions are no longer probable. Changes in the fair values of derivative instruments that are not designated as hedges or do not qualify for hedge accounting treatment are reported currently in earnings. Amounts reported in earnings are classified consistent with the item being hedged.

The effectiveness of derivative instruments in reducing risks associated with the hedged exposures is assessed at inception and on an ongoing basis. Any amounts excluded from the assessment of hedge effectiveness, and any ineffective portion of designated hedges, are reported currently in earnings. Time value, a component of an instrument's fair value, is excluded in assessing effectiveness for fair value hedges, except hedges of firm commitments, and included for cash flow hedges.

## Crown Holdings, Inc.

Hedge accounting is discontinued prospectively when (i) the derivative instrument is no longer effective in offsetting changes in fair value or cash flows of the underlying hedged item, (ii) the derivative instrument expires, is sold, terminated or exercised, or (iii) designating the derivative instrument as a hedge is no longer appropriate.

The Company formally documents all relationships between its hedging instruments and hedged items at inception, including its risk management objective and strategy for establishing various hedge relationships. Cash flows from hedging instruments are classified in the Consolidated Statements of Cash Flows consistent with the items being hedged.

**Treasury Stock.** Treasury stock is reported at par value. The excess of fair value over par value is first charged to paid-in capital, if any, and then to retained earnings.

**Research and Development.** Net research, development and engineering costs of \$48, \$42 and \$47 in 2007, 2006 and 2005, respectively, were expensed as incurred and reported in selling and administrative expense in the Consolidated Statements of Operations. Substantially all engineering and development costs are related to developing new products or designing significant improvements to existing products or processes. Costs primarily include employee salaries and benefits and facility costs.

**Reclassifications.** Certain reclassifications of prior years' data have been made to conform to the current year presentation.

**Recent Accounting and Reporting Standards.** Effective January 1, 2007, the Company adopted the following accounting and reporting standards:

FASB Interpretation No. 48 ("FIN 48"), "Accounting for Uncertainty in Income Taxes – an Interpretation of FASB Statement No. 109," which requires that the impact of a tax position be recognized if it is more likely than not that the position will be sustained on audit, based on the technical merits of the position. The tax position is measured at the largest amount of benefit that is greater than 50% likely of being realized upon ultimate settlement. The adoption of FIN 48 resulted in a charge of \$16 to accumulated deficit as of January 1, 2007. See Note X for additional information.

FASB Staff Position No. AUG AIR-1 ("FSP AUG AIR-1"), which prohibits the use of the accrue-in-advance method of accounting for planned major maintenance activities in annual and interim financial statements, and permits the use of the direct expensing and deferral methods. Effective January 1, 2007, the Company is using the direct expensing method in its annual and interim financial statements. The Company expensed annual planned major maintenance costs on a straight-line basis over the course of the year under its previous policy. The adoption of FSP AUG AIR-1 had no impact on the Company's annual financial statements.

SFAS 155 ("FAS 155"), "Accounting for Certain Hybrid Financial Instruments," which amends the guidance in FAS 133, "Accounting for Derivative Instruments and Hedging Activities" and FAS 140, "Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities." The standard allows financial instruments that have embedded derivatives to be accounted for as a whole (eliminating the need to bifurcate the derivative from its host) if the holder elects to account for the whole instrument on a fair value basis. The adoption of FAS 155 had no effect on the results of operations or financial position of the Company.

SFAS No. 156 ("FAS 156"), "Accounting for Servicing of Financial Assets – An Amendment of FASB Statement No. 140," which among other things, requires a company to recognize a servicing asset or servicing liability when it undertakes an obligation to service a financial asset by entering into a servicing contract under certain situations. The adoption of FAS 156 did not have a material impact on the results of operations or financial position of the Company.



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In December 2007, the FASB issued SFAS No. 160 ("FAS 160"), "Noncontrolling Interests in Consolidated Financial Statements – an amendment of ARB No. 51." FAS 160 requires the recognition of noncontrolling (minority) interests as equity in the consolidated financial statements, but separate from the parent's equity. The statement also requires that the amount of net income attributable to minority interests be included in consolidated net income on the face of the income statement. Assuming FAS 160 was adopted as of December 31, 2007, and using the amounts included in the Company's financial statements as of that date, the adoption of FAS 160 would increase the Company's shareholders' equity from \$15 to \$338 due to the inclusion of minority interests of \$323 in shareholders' equity. The effect on the income statement for the year ended December 31, 2007, would be to increase the Company's consolidated net income from \$528 to \$601 with the inclusion of the \$73 of net income attributable to minority interests, and the Company would separately disclose \$73 of consolidated net income attributable to minority interests.

### B. Discontinued Operations

During the second and third quarters of 2006, the Company sold its remaining European plastics businesses for \$2, net of cash divested. These operations primarily make plastic bottles as well as other products for cosmetics and beauty care companies. In November 2006, the Company sold its Americas health and beauty care business for \$4, net of cash divested. In October 2005, the Company sold its plastic closures business for total proceeds of \$690. The assets sold included \$50 of cash and the Company paid \$13 in fees related to the sale, resulting in net proceeds of \$627.

The divested businesses were previously included as non-reportable segments in the Company's segment reporting and had combined net sales of \$158 and \$931 for the years ended December 31, 2006 and 2005, respectively.

The results of operations for the divested businesses are reported within discontinued operations in the accompanying statements of operations, and prior period statements of operations have been recast. The segment results in Note Y and the Condensed Combining Statements of Operations in Note Z have also been recast for the divested businesses. The Consolidated Statements of Cash Flows do not separately report the cash flows of the discontinued operations. Interest expense was not allocated to the divested businesses and, therefore, all of the Company's interest expense is included within continuing operations.

The components of the loss from discontinued operations are presented below.

	2006	2005
Income/(loss) before tax	(\$ 6)	\$ 6
Income tax on operations		( 4)
Loss on disposal	( 28)	( 27)
Income tax on disposal	1	( 17)
Loss from discontinued operations	<u>(\$33)</u>	<u>(\$42)</u>

### C. Change in Consolidation

In connection with the Company's plans to expand its beverage can operations in the Middle East, the Company obtained effective control of certain of these operations as of September 1, 2005 through amendments to existing shareholders' agreements. The Company owns from 40% to 50% of these operations and its ownership percentages did not change as a result of the amendments. With the amendments, the Company now has the unilateral right to establish the operating, capital and financing activities of these operations and, accordingly, has changed its method of accounting to the consolidation method from the equity method.

The change in accounting had no effect on the Company's net income or earnings per share. The Company's proforma net sales for 2005 would have been \$6,792 if the operations were consolidated as of January 1, 2005.

# Crown Holdings, Inc.

## D. Goodwill and Intangible Assets

The changes in the carrying amount of goodwill by reportable segment for the years ended December 31, 2007 and 2006 were as follows:

	Americas Beverage	North America Food	European Beverage	European Food	Non-reportable segments	Total
Balance at January 1, 2006	\$420	\$151	\$673	\$629	\$140	\$2,013
Foreign currency translation			77	74	21	172
Balance at December 31, 2006	420	151	750	703	161	2,185
Impairment charge				( 103)		( 103)
Foreign currency translation	8	13	30	49	17	117
Balance at December 31, 2007	<u>\$428</u>	<u>\$164</u>	<u>\$780</u>	<u>\$649</u>	<u>\$178</u>	<u>\$2,199</u>

During the fourth quarter of 2007, the Company recognized an impairment charge of \$103 to write down the value of goodwill in its European metal vacuum closures reporting unit due to a decrease in projected operating results. Estimated fair value for the reporting unit was calculated using a combination of market values for comparable businesses and discounted cash flow projections.

Identifiable intangible assets other than goodwill are recorded within other non-current assets in the Consolidated Balance Sheets and are not material.

## E. Accumulated Other Comprehensive Loss

As of December 31, accumulated other comprehensive loss consists of the following:

	2007	2006
Pension and postretirement adjustments.....	(\$1,239)	(\$1,304)
Cumulative translation adjustments.....	( 402)	( 433)
Derivatives qualifying as hedges.....	( 5)	2
Available for sale securities.....		4
	<u>(\$1,646)</u>	<u>(\$1,731)</u>

## F. Receivables

	2007	2006
Accounts and notes receivable.....	\$525	\$584
Less: allowance for doubtful accounts.....	( 28)	( 38)
Net trade receivables.....	497	546
Miscellaneous receivables.....	176	143
	<u>\$673</u>	<u>\$689</u>

Following are the changes in the allowance for doubtful accounts for the years ended December 31, 2007, 2006 and 2005. Charges or credits to the allowance that affect the consolidated statements of operations are reported within cost of products sold, excluding depreciation and amortization.

	Balance at beginning of year	Expense	Write-offs	Translation	Balance at end of year
2005	\$42		(\$ 5)	(\$4)	\$33
2006	33	\$3	( 1)	3	38
2007	38	3	( 15)	2	28

## Crown Holdings, Inc.

The Company utilizes receivable securitization facilities in the normal course of business as part of its management of cash flow activities. Under its committed \$225 North American facility, the Company sells receivables, on a revolving basis, to a wholly-owned, bankruptcy-remote subsidiary. The subsidiary was formed for the sole purpose of buying and selling receivables generated by the Company and, in turn, sells undivided percentage ownership interests in the pool of purchased receivables to a syndicate of financial institutions.

The Company continues to service these receivables for a fee but does not retain any interest in the receivables sold. The Company has relinquished control of the receivables and the sales are reflected as a reduction in receivables within the Consolidated Balance Sheets. At both December 31, 2007 and 2006, \$130 of receivables were securitized under the North American facility.

Under the Company's committed €120 European securitization facility, certain subsidiaries in the U.K. and France sell receivables to an entity formed in France for the sole purpose of buying receivables from the selling subsidiaries. The buying entity finances the purchase of receivables through the issuance of senior units to a company in which the Company does not retain any interest. The selling subsidiaries continue to service the receivables for a fee, but do not retain any interest in the receivables sold and the sales are reflected as a reduction in receivables within the Consolidated Balance Sheets. At December 31, 2007 and 2006, €97 and €83, respectively, of receivables were securitized under this facility.

During 2007, 2006 and 2005, the Company recorded expenses related to the securitization facilities of \$17, \$15 and \$9, respectively, as interest expense, including commitment fees of 0.25% on the unused portion of the facilities.

### G. Inventories

	2007	2006
Finished goods .....	\$ 380	\$338
Work in process .....	125	126
Raw materials and supplies .....	525	493
	<u>\$1,030</u>	<u>\$957</u>

During the fourth quarter of 2007, the Company changed the method of accounting for its U.S. inventories from the LIFO method to the FIFO method. The Company believes the FIFO method better matches revenues and expenses, yields an inventory balance that more closely approximates current costs, and improves the comparability of its financial statements with peer companies. Prior periods presented in this report have been recast to report as if the FIFO method of accounting had been used for all periods presented and the effect of those changes are presented below.

**Crown Holdings, Inc.**

<b>Consolidated statements of operations for the years ended December 31</b>	<b>2006</b>		<b>2005</b>	
	As originally reported	As adjusted for accounting change	As originally reported	As adjusted for accounting change
Cost of products sold	\$5,863	\$5,863	\$5,535	\$5,527
Gross profit	892	892	903	911
Income/(loss) from continuing operations before income taxes, minority interests and equity earnings	335	335	( 270)	( 262)
Income/(loss) from continuing operations	342	342	( 320)	( 312)
Net income/(loss)	309	309	( 362)	( 354)
Basic earnings/(loss) per share – continuing operations	2.07	2.07	( 1.93)	( 1.88)
Diluted earnings/(loss) per share – continuing operations	2.01	2.01	( 1.93)	( 1.88)
Basic earnings/(loss) per share	1.87	1.87	( 2.18)	( 2.13)
Diluted earnings/(loss) per share	1.82	1.82	( 2.18)	( 2.13)
<b>Consolidated balance sheets as of December 31</b>				
Inventories	906	957	810	861
Accumulated deficit at December 31	( 1,217)	( 1,166)	( 1,526)	( 1,475)
Accumulated deficit at January 1	( 1,526)	( 1,475)	( 1,164)	( 1,121)
<b>Consolidated statements of cash flows for the years ended December 31</b>				
Inventory working capital change	( 66)	( 66)	( 28)	( 36)

If the Company had not changed its method of accounting for inventory from LIFO to FIFO, cost of products sold, excluding depreciation and amortization for the year ended December 31, 2007 would have been \$6 higher than reported in the consolidated statement of earnings, and net income would have been \$4 lower. On a per share basis, basic and diluted earnings per share would have been lower by \$0.02. The change had no effect on net income for the year ended December 31, 2006.

**H. Property, Plant and Equipment**

	<b>2007</b>	<b>2006</b>
Buildings and improvements.....	\$ 792	\$ 732
Machinery and equipment.....	4,075	3,817
	4,867	4,549
Less: accumulated depreciation and amortization.....	( 3,494)	( 3,179)
	1,373	1,370
Land and improvements.....	148	141
Construction in progress.....	83	97
	<u>\$1,604</u>	<u>\$1,608</u>

**Crown Holdings, Inc.**

**I. Other Non-Current Assets**

	2007	2006
Deferred taxes.....	\$419	\$ 30
Pension assets.....	390	295
Debt issue costs.....	51	61
Investments.....	34	39
Long-term notes and receivables.....	3	40
Other.....	45	38
	<u>\$942</u>	<u>\$503</u>

The increase in deferred taxes is primarily due to the reversal of the U.S. valuation allowance as discussed in Note X.

The investments caption primarily includes the Company's investments accounted for by the equity method and the cost method. The caption also includes balances of \$9 as of December 31, 2007 and 2006 for investments accounted for as available-for-sale securities. The decrease in long-term notes and receivables is due to the collection in 2007 of a note from the sale of a property in 2006.

**J. Accounts Payable and Accrued Liabilities**

	2007	2006
Trade accounts payable.....	\$1,328	\$1,224
Salaries, wages and other employee benefits, including pension and postretirement.....	206	167
Accrued taxes, other than on income.....	121	120
Accrued interest.....	44	42
Income taxes payable.....	30	39
Asbestos liabilities.....	26	25
Deferred taxes.....	26	20
Restructuring.....	15	11
Other.....	204	187
	<u>\$2,000</u>	<u>\$1,835</u>

**K. Other Non-Current Liabilities**

	2007	2006
Asbestos liabilities.....	\$175	\$173
Fair value of derivatives.....	100	55
Deferred taxes.....	81	106
Postemployment benefits.....	48	44
Income taxes payable.....	41	
Environmental.....	22	23
Other.....	112	98
	<u>\$579</u>	<u>\$499</u>

Income taxes payable in 2007 includes liabilities recorded in accordance with FIN 48 as discussed in Note A and Note X.

## **Crown Holdings, Inc.**

### **L. Lease Commitments**

The Company leases manufacturing, warehouse and office facilities and certain equipment. Certain non-cancelable leases are classified as capital leases, and the leased assets are included in property, plant and equipment. Other long-term non-cancelable leases are classified as operating leases and are not capitalized. Certain of the leases contain renewal or purchase options, but the leases do not contain significant contingent rental payments, escalation clauses, rent holidays, rent concessions or leasehold improvement incentives. The amount of capital leases reported as capital assets, net of accumulated amortization, was \$7 and \$4 at December 31, 2007 and 2006, respectively.

Under long-term operating leases, minimum annual rentals are \$65 in 2008, \$52 in 2009, \$42 in 2010, \$32 in 2011, \$27 in 2012, and \$65 thereafter. Such rental commitments have been reduced by minimum sublease rentals of \$6 due under non-cancelable subleases. The present value of future minimum payments on capital leases was \$7 as of December 31, 2007. Rental expense (net of sublease rental income) was \$69, \$57 and \$52 in 2007, 2006 and 2005, respectively.

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### **M. Provision for Asbestos**

Crown Cork & Seal Company, Inc. ("Crown Cork") is one of many defendants in a substantial number of lawsuits filed throughout the United States by persons alleging bodily injury as a result of exposure to asbestos. These claims arose from the insulation operations of a U.S. company, the majority of whose stock Crown Cork purchased in 1963. Approximately ninety days after the stock purchase, this U.S. company sold its insulation assets and was later merged into Crown Cork.

Prior to 1998, the amounts paid to asbestos claimants were covered by a fund made available to Crown Cork under a 1985 settlement with carriers insuring Crown Cork through 1976, when Crown Cork became self-insured. The fund was depleted in 1998 and the Company has no remaining coverage for asbestos-related costs.

In April 2007, May 2006, May 2005, January 2005 and April 2004, the States of Georgia, South Carolina, Florida, Ohio and Mississippi, respectively, enacted legislation that limits the asbestos-related liabilities under state law of companies such as Crown Cork that allegedly incurred these liabilities because they are successors by corporate merger to companies that had been involved with asbestos. The new legislation, which applies to future and, with the exception of Georgia and South Carolina, pending claims, caps asbestos-related liabilities at the fair market value of the predecessor's total gross assets adjusted for inflation. Crown Cork has paid significantly more for asbestos-related claims than the total value of its predecessor's assets adjusted for inflation. Crown Cork has integrated the legislation into its claims defense strategy. The Company cautions, however, that the legislation may be challenged and there can be no assurance regarding the ultimate effect of the legislation on Crown Cork.

In June 2003, the State of Texas enacted legislation that limits the asbestos-related liabilities in Texas courts of companies such as Crown Cork that allegedly incurred these liabilities because they are successors by corporate merger to companies that had been involved with asbestos. The Texas legislation, which applies to future claims and pending claims, caps asbestos-related liabilities at the total gross value of the predecessor's assets adjusted for inflation. Crown Cork has paid significantly more for asbestos-related claims than the total adjusted value of its predecessor's assets. On October 31, 2003, Crown Cork received a favorable ruling on its motion for summary judgment in two asbestos-related cases pending against it in the district court of Harris County, Texas (in *Re Asbestos Litigation No. 90-23333*, District Court, Harris County, Texas), which were appealed. On May 4, 2006, the Texas Fourteenth Court of Appeals upheld the favorable ruling on one of the two cases (*Barbara Robinson v. Crown Cork & Seal Company, Inc.*, No. 14-04-00658-CV, Fourteenth Court of Appeals, Texas). The Appeals court decision has been appealed by the plaintiff to the Texas Supreme Court where oral argument was held on February 7, 2008. The Texas Supreme Court has not ruled on the appeal. In addition, a favorable ruling for summary judgment in an asbestos case pending against it in the district court of Travis County, Texas (in *Re Rosemarie Satterfield as Representative of the Estate of Jerrold Braley Deceased v. Crown Cork & Seal Company, Inc.* District Court Travis County, 98<sup>th</sup> Judicial District

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Cause No. GN-203572) has been appealed. Although the Company believes that the rulings of the District Court and Appeals Court are correct, there can be no assurance that the legislation will be upheld by the Texas courts on appeal or in other cases that may challenge the legislation.

In December 2001, the Commonwealth of Pennsylvania enacted legislation that limits the asbestos-related liabilities of Pennsylvania corporations that are successors by corporate merger to companies involved with asbestos. The legislation limits the successor's liability for asbestos to the acquired company's asset value adjusted for inflation. Crown Cork has already paid significantly more for asbestos-related claims than the acquired company's adjusted asset value. On February 20, 2004, the Supreme Court of Pennsylvania reversed the June 11, 2002 order of the Philadelphia Court of Common Pleas, in which the Court of Common Pleas ruled favorably on a motion by Crown Cork for summary judgment regarding 376 pending asbestos-related cases against Crown Cork in Philadelphia and remanded the cases to the Philadelphia Court of Common Pleas (*Ieropoli v. AC&S Corporation, et. al.*, No. 117 EM 2002). The Court ruled that the new statute, as applied, violated the Pennsylvania Constitution because it retroactively extinguished the plaintiffs' pre-existing and accrued causes of action. The Company believes that the ruling by the court was limited only to cases which were pending at the time the legislation was enacted. In November 2004, the Commonwealth of Pennsylvania enacted legislation amending the 2001 successor liability statute providing that the 2001 statute applies only to asbestos-related claims with respect to which the two-year statute of limitations for asbestos-related claims had not yet commenced at the time the statute was enacted on December 17, 2001. On July 28, 2005, the Philadelphia Court of Common Pleas granted Crown Cork's global motion for summary judgment to dismiss all pending asbestos-related cases filed in the court after December 17, 2003 (In re: Asbestos-Litigation October term 1986, No. 001). Additional cases have been dismissed subsequent to July 28, 2005 by the Philadelphia Court of Common Pleas. These decisions remain subject to potential appeal by the plaintiffs and, in some cases, appeals to the Superior Court of Pennsylvania have been filed by the plaintiffs in connection with these decisions and oral argument was held before the Superior Court. The Superior Court has not ruled on these appeals. The Company cautions that the limitation of the statute may not be upheld.

During 2007, 2006 and 2005, respectively, Crown Cork (i) received 4,000, 5,000 and 9,000 new claims, (ii) settled or dismissed 4,000, 5,000 and 4,000 claims, and (iii) had 79,000 claims outstanding at the end of each of the last three years. The outstanding claims at December 31, 2007 exclude 33,000 pending claims involving plaintiffs who allege that they are, or were, maritime workers subject to exposure to asbestos, but whose claims the Company believes will not have a material effect on the Company's consolidated results of operations, financial position or cash flow.

During 2007, 2006 and 2005, respectively, the Company (i) recorded pre-tax charges of \$29, \$10 and \$10 to increase its accrual, (ii) made asbestos-related payments of \$26, \$26 and \$29, (iii) settled claims totaling \$15, \$20 and \$15, including amounts committed to be paid in future periods and (iv) had outstanding accruals of \$201, \$198 and \$214 at the end of the year.

The Company estimates that its probable and estimable asbestos liability for pending and future asbestos claims and related legal costs is \$201 at the end of 2007, including \$72 for unasserted claims and \$5 for committed settlements that will be paid in 2008.

Historically (1977-2007), Crown Cork estimates that approximately one-quarter of all asbestos-related claims made against it have been asserted by claimants who claim first exposure to asbestos after 1964. However, because of Crown Cork's settlement experience to date and the increased difficulty of establishing identification of the subsidiary's insulation products as the cause of injury by persons alleging first exposure to asbestos after 1964, the Company has not included in its accrual any amounts for settlements by persons alleging first exposure to asbestos after 1964.

Underlying the accrual are assumptions that claims for exposure to asbestos that occurred after the sale of the U.S. company's insulation business in 1964 would not be entitled to settlement payouts and that the Georgia, South Carolina, Florida, Ohio, Mississippi, Texas and Pennsylvania asbestos legislation described above are expected to have a highly favorable impact on Crown Cork's ability to settle or defend against asbestos-related claims in those states, and other states where Pennsylvania law may apply. The Company's accrual of \$201 includes estimates for probable costs for claims through the

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year 2017. Estimated additional claims costs of \$42 beyond 2017 have not been included in the Company's liability, as the Company believes cost projections beyond ten years are inherently unreliable due to potential changes in the litigation environment and other factors whose impact cannot be known or reasonably estimated.

While it is not possible to predict the ultimate outcome of the asbestos-related claims and settlements, the Company believes that resolution of these matters is not expected to have a material adverse effect on the Company's financial position. The Company cautions, however, that estimates for asbestos cases and settlements are difficult to predict and may be influenced by many factors. In addition, there can be no assurance regarding the validity or correctness of the Company's assumptions or beliefs underlying its accrual. Unfavorable court decisions or other adverse developments may require the Company to substantially increase its accrual or change its estimate. Accordingly, these matters, if resolved in a manner different from the estimate, could have a material effect on the Company's results of operations, financial position or cash flow.

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### **N. Commitments and Contingent Liabilities**

The Company has been identified by the EPA as a potentially responsible party (along with others, in most cases) at a number of sites. The Company also has environmental issues at certain of its plants in the Americas and Europe. Actual expenditures for remediation were \$1 in each of the last three years. The Company's balance sheet reflects estimated discounted remediation liabilities of \$25 and \$24 at December 31, 2007 and 2006, respectively, including \$3 and \$1 as current liabilities, respectively. The Company records an environmental liability when it is probable that a liability has been incurred and the amount of the liability is reasonably estimable. The reserves at December 31, 2007 are primarily for asserted claims and are based on internal and external environmental studies. The Company expects that the liabilities will be paid out over the period of remediation for the applicable sites, which in some cases may exceed ten years. Although the Company believes its reserves are adequate, there can be no assurance that the ultimate payments will not exceed the amount of the Company's reserves and will not have a material effect on the Company's consolidated results of operations, financial position or cash flow. Any possible loss or range of potential loss that may be incurred in excess of the recorded reserves cannot be estimated.

In 2003, Crown Cork amended the retiree medical benefits that it had been providing to approximately 10,000 retirees pursuant to a series of collective bargaining agreements between Crown Cork and certain unions. The amendments increased maximum coverage, required additional retiree contributions for medical and prescription drug costs and reduced other coverage benefits. Crown Cork has been a party to litigation in which the USWA and IAM unions and retirees claim that the retiree medical benefits were vested and that the amendments breached the applicable collective bargaining agreements in violation of ERISA and the Labor Management Relations Act. In binding arbitration regarding the USWA matter the arbitrator ruled in favor of the USWA parties with respect to employees who retired prior to the 1993 collective bargaining agreement and in favor of Crown Cork with respect to employees who retired under the 1993 and 1998 collective bargaining agreements. The parties are in the remedy stage of the arbitration with respect to employees who retired prior to the 1993 agreement. The Company recorded a charge of \$4 in the fourth quarter of 2007 for the estimated settlement costs.

With respect to litigation involving Crown Cork and the IAM parties, a federal district court in Nebraska ruled that, pursuant to the collective bargaining agreement, the matter should be resolved through arbitration. Crown Cork appealed that decision to the Eighth Circuit Court of Appeals. The Eighth Circuit determined that the retiree medical benefits were not vested and that the Company has the unilateral right to modify or discontinue these benefits. The period for requesting review of the decision to the U.S. Supreme Court expired in 2007 and the litigation with the IAM parties formally concluded in January 2008.



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The Company and its subsidiaries are also subject to various other lawsuits and claims with respect to labor, environmental, securities, vendor and other matters arising out of the normal course of business. While the impact on future financial results is not subject to reasonable estimation because considerable uncertainty exists, management believes that the ultimate liabilities resulting from such lawsuits and claims will not materially affect the Company's consolidated results of operations, financial position or cash flow.

The Company has various commitments to purchase materials, supplies and utilities totaling approximately \$3.5 billion as of December 31, 2007 as part of the ordinary conduct of business. The Company's basic raw materials for its products are steel and aluminum, both of which are purchased from multiple sources. The Company is subject to fluctuations in the cost of these raw materials and has periodically adjusted its selling prices to reflect these movements. There can be no assurance, however, that the Company will be able to fully recover any increases or fluctuations in raw material costs from its customers.

At December 31, 2007 the Company had certain indemnification agreements covering environmental remediation, lease payments, and other potential costs associated with properties sold or businesses divested. For agreements with defined liability limits the maximum potential amount of future liability was \$36. Several agreements outstanding at December 31, 2007 did not provide liability limits. At December 31, 2007, the Company had recorded liabilities of \$4 for these indemnification agreements. The Company also has guarantees of \$29 related to the residual value of leased assets at December 31, 2007.

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#### **O. Restructuring**

During 2007, the Company provided a pre-tax charge of \$20 for restructuring costs, including \$7 for severance and other exit costs in the European Food segment, \$6 for the reclassification of cumulative translation adjustments to earnings from the closure of its operations in Indonesia, \$3 of corporate costs for the settlement of a labor dispute related to prior restructurings, and \$4 for other severance and exit costs.

During 2006, the Company provided a net pre-tax charge of \$15 for restructuring costs, including \$6 for severance costs in the European Food segment to close a plant, \$4 of corporate charges for the estimated settlement costs of a labor dispute related to prior restructurings, \$3 for severance costs in the European Specialty Packaging segment to reduce headcount, and \$4 for other severance and exit costs, partially offset by a reversal of \$2 of severance costs provided during 2005.

During 2005, the Company provided a pre-tax charge of \$13 for restructuring costs, including \$3 in the Americas Beverage segment for severance costs to reduce headcount at a plant, \$5 for severance costs to reduce headcount in a European aerosol can plant, \$2 for severance costs to reduce headcount in the U.S. research and development group, and \$3 for other severance and exit costs.

The charges above represent the total amount expected to be incurred in connection with each activity. Balances remaining in the reserves at December 31, 2007 included provisions of \$10 for current year actions and \$5 for prior restructuring actions. The balance of the restructuring reserves was included in the Consolidated Balance Sheets within accounts payable and accrued liabilities.

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The components of the restructuring reserve and movements within these components during 2007 and 2006 were as follows:

	Termination benefits	Other exit costs	Total
Balance at January 1, 2006	\$12	\$ 1	\$13
Provisions	8	7	15
Payments made	( 14)	( 3)	( 17)
Foreign currency translation and other	1	( 1)	
Balance as of December 31, 2006	7	4	11
Provisions	8	12	20
Payments made	( 9)	( 4)	( 13)
Foreign currency translation and other	2	( 5)	( 3)
Balance at December 31, 2007	<u>\$ 8</u>	<u>\$ 7</u>	<u>\$15</u>

### P. Asset Impairments and Loss/Gain on Sale of Assets

During 2007, the Company recorded net pre-tax charges of \$100 for asset sales and asset impairments, including a non-cash goodwill impairment charge of \$103 in the European metal vacuum closures business, partially offset by \$3 of other net gains from asset sales and impairment charges.

During 2006, the Company recorded net pre-tax gains of \$64 for asset sales and asset impairments, including a gain of \$62 from the sale of a building in the European Food segment. The net building sale proceeds of \$71 included a note of \$37. The Company is leasing back the facility for a period of up to eighteen months and will have no other continuing involvement with the facility. The Company also sold real estate and equipment in the U.S. for \$29, some of which it is leasing back including equipment under a capital lease with a net present value of \$4. Deferred gains of \$5 on these sales are being recognized over the lives of the leases.

During 2005, the Company recorded net pre-tax gains of \$18 for asset sales and asset impairments, including a gain of \$7 for the reversal of a provision for an expected loss on divestiture in Asia, and other net gains of \$11 for asset sales. In Asia, the Company received a waiver of a local requirement to divest a portion of one of its subsidiaries and, accordingly, reversed its provision for the expected loss on divestiture at a price below fair value.

### Q. Capital Stock

As of December 31, 2007 and 2006, there were 159,777,628 and 162,711,471 common shares outstanding, respectively.

Shares of common stock issued as compensation to non-employee directors were 22,268 in 2007, 34,480 in 2006, and 35,308 in 2005.

The Company's first priority revolving credit and term loan facilities and its first priority senior secured notes limit the payment of dividends and the repurchase of common stock, subject to certain permitted payments or repurchases and exceptions.

The Board of Directors has the authority to issue, at any time or from time to time, up to 30 million shares of additional preferred stock in one or more classes or series of classes. Such shares of additional preferred stock would not be entitled to more than one vote per share when voting as a class with holders of the Company's common stock. The voting rights and such designations, preferences, limitations and special rights are subject to the terms of the Company's Articles of Incorporation, determined by the Board of Directors.

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In February 2008, the Board of Directors authorized the repurchase of up to \$500 of common stock from time to time through December 31, 2010. This authorization replaces and supersedes all previous outstanding authorizations to repurchase shares. In August 2006, the Company entered into an amendment to its first priority credit facility providing for an additional \$200 first priority term loan facility due 2012 to be utilized to, among other things, repurchase, redeem or otherwise acquire or retire for value outstanding common stock of the Company, subject to certain limitations. In December 2006, the Company paid \$15 to the holders of the first priority senior secured notes to amend the indenture to, among other things, allow the Company to make \$100 of additional restricted payments of any type, including restricted payments for the repurchase or other acquisition or retirement for value of shares of Company common stock.

Each repurchase may be made in the open market, through privately negotiated transactions, through accelerated share repurchase programs, which may be entered into at any time, or otherwise, subject to the terms of the Company's debt agreements, market conditions and other factors. The Company is not obligated to acquire any shares of common stock and the share repurchase program may be suspended or terminated at any time at the Company's discretion. The repurchased shares, if any, are expected to be used for the Company's stock-based benefit plans, as required, and to offset dilution resulting from the issuance of shares thereunder, and for other general corporate purposes. During 2007, the Company repurchased 4,974,892 common shares at a total cost of \$118. The \$118 of 2007 repurchases included 4,234,077 common shares for \$100 under an accelerated share repurchase program. During 2006, the Company repurchased 7,046,378 common shares at a total cost of \$135, including 5,262,878 common shares for \$100 under an accelerated share repurchase program.

In 2003, the Board of Directors adopted a Shareholders' Rights Plan, as amended in 2004, and declared a dividend of one right for each outstanding share of common stock. Such rights only become exercisable, or transferable apart from the common stock, after a person or group acquires beneficial ownership of, or commences a tender or exchange offer for, 15% or more of the Company's common stock. Each right then may be exercised to acquire one share of common stock at an exercise price of \$200, subject to adjustment. Alternatively, under certain circumstances involving the acquisition by a person or group of 15% or more of the Company's common stock, each right will entitle its holder to purchase a number of shares of the Company's common stock having a market value of two times the exercise price of the right. In the event the Company is acquired in a merger or other business combination transaction after a person or group has acquired 15% or more of the Company's common stock, each right will entitle its holder to purchase a number of the acquiring company's common shares having a market value of two times the exercise price of the right. The rights may be redeemed by the Company at \$.01 per right at any time until the tenth day following public announcement that a 15% position has been acquired. The rights expire on August 10, 2015.

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### **R. Stock-Based Compensation**

As of December 31, 2007, the Company had six active stock-based incentive compensation plans - the 1990, 1994, 1997, 2001, 2004 and 2006 plans, all of which have been approved by the Company's shareholders. The plans provide for the granting of awards in the form of stock options, deferred stock, restricted stock or stock appreciation rights ("SARs") and may be subject to the achievement of certain performance goals as determined by the Plan Committee designated by the Board of Directors. There have been no issuances of deferred stock or SARs under any of the plans as of December 31, 2007. As of December 31, 2007, there were approximately 4.1 million shares available for awards under the 2004 and 2006 plans, and no shares were available under the other four plans. The 2004 and 2006 plans expire in April 2009 and 2016, respectively. Shares awarded are generally issued from the Company's treasury shares.

# Crown Holdings, Inc.

## Stock Options

A summary of stock option activity follows:

	2007	
	Shares	Weighted Average Exercise Price
Options outstanding at January 1 .....	8,191,170	\$13.42
Granted .....	3,722,000	23.47
Exercised .....	(1,651,903)	8.36
Forfeited .....	( 107,500)	23.45
Expired .....	( 294,250)	48.09
Options outstanding at December 31 .....	9,859,517	16.92
Options fully vested or expected to vest at December 31 .....	9,540,185	\$16.70

The following table summarizes outstanding and exercisable options at December 31, 2007:

Options Outstanding				Options Exercisable	
Range of Exercise Prices	Number Outstanding	Weighted Average Remaining Contractual Life	Weighted Average Exercise Price	Number Exercisable	Weighted Average Exercise Price
\$4.25 to \$5.30	1,031,280	3.6	\$ 4.83	1,031,280	\$ 4.83
\$5.49 to \$8.38	562,187	3.1	7.46	562,187	7.46
\$8.60	2,179,400	6.1	8.60	2,179,400	8.60
\$8.75	774,750	5.7	8.75	774,750	8.75
\$19.81 to \$22.60	875,650	2.3	20.49	852,900	20.58
\$23.45	3,568,500	9.1	23.45	0	
\$23.88 to \$53.44	867,750	1.2	31.88	827,750	35.60
	<u>9,859,517</u>	6.0	16.63	<u>6,228,267</u>	13.12

Outstanding stock options have a contractual term of ten years, are fixed-price and non-qualified, and vest either semi-annually or annually between six months and six years from the date of grant.

Options outstanding at December 31, 2007 had an aggregate intrinsic value (which is the amount by which the stock price exceeded the exercise price of the options as of December 31, 2007) of \$94. The aggregate intrinsic value of options exercised during the years ended December 31, 2007, 2006 and 2005 was \$26, \$33 and \$29, respectively. Cash received from exercise of stock options during 2007 was \$14. A tax benefit of \$2 was realized from stock options exercised during 2007.

At December 31, 2007, shares that were fully vested or expected to vest had an aggregate intrinsic value of \$94 and a weighted-average remaining contractual term of 5.9 years, and shares exercisable had an aggregate intrinsic value of \$86 and a weighted-average remaining contractual term of 4.1 years. Also at December 31, 2007, there was \$28 of unrecognized compensation expense related to outstanding nonvested stock options with a weighted-average recognition period of 5.1 years.

Stock options are valued at their grant-date fair value using the Black-Scholes option pricing model. Valuations incorporate several variables, including expected term, expected volatility, and a risk-free interest rate. The expected term (which is the timeframe under which an award is exercised after grant) is derived from historical data about participant exercise and post-vesting employment termination patterns. Volatility is the expected fluctuation of the Company's stock price in the market and is derived from a combination of historical data about the Company's stock price and implied volatilities based on market data. The risk-free interest rate is the U.S. Treasury yield curve rate in effect at the date of the grant which has a contractual life similar to the option's expected term.

## Crown Holdings, Inc.

During 2007, the Company granted approximately 3.7 million stock options to employees under its 2006 stock-based incentive compensation plan. The options have a ten-year contractual life and vest over six years at 20% per year with the initial vesting scheduled on the second anniversary of the grant. The grants were valued using the Black-Scholes option pricing model.

The fair value of each stock option on the date of the grant was estimated using the Black-Scholes option pricing model with the following weighted average assumptions:

	2007	2005
Risk-free interest rate	4.7%	4.2%
Expected life of option (years)	6.0	4.0
Expected stock price volatility	32.2%	29.9%
Expected dividend yield	0.0%	0.0%

The weighted average grant-date fair values for options granted during 2007 and 2005 were \$9.50 and \$4.83, respectively. There were no options granted during 2006.

Compensation expense for stock options was \$5 in both 2007 and 2006, using an annual forfeiture rate of approximately two percent. The forfeiture rate is based on historical data of the forfeiture of nonvested share-based awards through the termination of service by plan participants.

### Restricted Stock

Restricted stock was issued in each of the last three years, under the 2004 and 2006 stock-based incentive compensation plans to certain senior executive officers. A portion of the restricted stock vests ratably over three years on the anniversary of the date of grant and a portion is subject to performance-based vesting. The 2007 and 2006 awards included 258,218 shares and 277,440 shares, respectively, that are time-vested. The time-vested awards permit the accelerated vesting of nonvested shares upon termination of a participant due to retirement, disability or death. The fair value of the time-vested awards was based on the Company's closing stock price at the grant date. The 2007 and 2006 awards included 136,003 shares and 145,144 shares, respectively, that contain a market performance feature. The market performance criterion applied to these shares is the median Total Shareholder Return ("TSR"), which includes share price appreciation and dividends paid, of the Company during the three-year term of the grant measured against a peer group of companies. The level of shares which vest is based on the level of performance achieved, ranges between 0% and 200% of the shares awarded and are settled in stock. The fair value of each performance share was calculated as \$25.36 and \$21.17 for 2007 and 2006, respectively, using a Monte Carlo valuation model. The variables used in this model included stock price volatility of 28.4% in 2007 and 36.9% in 2006, an expected term of three years, and a risk-free interest rate of 4.8% in 2007 and 4.7% in 2006, along with other factors associated with the relative performance of the Company's stock price and shareholder returns when compared to the companies in the peer group.

A summary of restricted stock transactions during the year ended December 31, 2007 follows:

	Shares	Weighted-Average Grant Date Fair Value
Beginning outstanding	825,383	\$16.33
Awarded	394,221	22.92
Released	(360,746)	15.00
Ending outstanding	<u>858,858</u>	<u>\$18.89</u>

Compensation expense for restricted stock was \$9, \$6 and \$3 in 2007, 2006 and 2005, respectively. As of December 31, 2007, there was \$7 of unrecognized compensation cost related to outstanding nonvested restricted stock awards. This cost is expected to be recognized over the remaining weighted-average vesting period of 1.3 years. The total fair value of shares that vested during the years ended December 31, 2007 and 2006 was \$8 and \$3, respectively. No awards vested during 2005.

**Crown Holdings, Inc.**

**S. Debt**

	2007	2006
<u>Short-term debt (1)</u>		
U.S. dollar bank loans/overdrafts .....	\$ 10	\$ 20
Other currency bank loans/overdrafts .....	35	58
Total short-term debt .....	<u>\$ 45</u>	<u>\$ 78</u>
<u>Long-term debt</u>		
Credit facility borrowings: (2)		
U.S. dollar .....		\$ 60
Other currencies .....		119
Senior secured notes:		
Euro (€460) 6.25% first priority due 2011 .....	\$ 672	606
First priority term loans:		
U.S. dollar at LIBOR plus 1.75% due 2012 .....	358	361
Euro (€281 in 2007) at EURIBOR plus 1.75% due 2012 .....	410	374
Senior notes and debentures:		
U.S. dollar 7.625% due 2013 .....	500	500
U.S. dollar 7.75% due 2015 .....	600	600
U.S. dollar 8.00% due 2023 .....	200	200
U.S. dollar 7.375% due 2026 .....	350	350
U.S. dollar 7.50% due 2096 .....	150	150
Other indebtedness in various currencies:		
Fixed rate with rates in 2007 from 1.0% to 14.6% due 2008 through 2015 .....	71	51
Variable rate with average rates in 2007 from 6.0% to 9.8% due 2008 through 2014 .....	86	97
Unamortized discounts .....	( 5)	( 5)
Total long-term debt .....	3,392	3,463
Less: current maturities .....	( 38)	( 43)
Total long-term debt, less current maturities .....	<u>\$3,354</u>	<u>\$3,420</u>

- (1) The weighted average interest rates for bank loans and overdrafts outstanding during 2007, 2006 and 2005 were 5.7%, 6.2% and 4.3%, respectively.
- (2) The \$800 revolving credit facility is due 2011 and currently bears interest at EURIBOR or LIBOR plus 1.25%. The weighted average interest rates for the credit facilities during 2007, 2006 and 2005 were 7.0%, 6.7% and 5.0%, respectively.

Aggregate maturities of long-term debt for the five years subsequent to 2007, excluding unamortized discounts, were \$38, \$33, \$36, \$739 and \$747, respectively. Cash payments for interest during 2007, 2006 and 2005 were \$293, \$256 and \$389, respectively, including amounts capitalized of \$1 in both 2006 and 2005.

The estimated fair value of the Company's long-term borrowings, based on quoted market prices for the same or similar issues, was \$3,339 at December 31, 2007.

During 2007, 2006 and 2005, the Company recorded pre-tax foreign exchange gains of \$12 and losses of \$6 and \$94, respectively, primarily for certain subsidiaries that had unhedged currency exposure arising from intercompany debt obligations. The losses are included in translation and exchange adjustments in the Consolidated Statements of Operations.

## Crown Holdings, Inc.

### T. Debt Refinancings and Early Extinguishments

In 2005, the Company sold \$500 of 7.625% senior notes due 2013 and \$600 of 7.75% senior notes due 2015, and entered into an \$800 first priority revolving credit facility due 2011 and a first priority term loan facility due 2012 comprised of \$165 and €287 term loans. In August 2006, the Company entered into an amendment to its first priority credit facility providing for an additional \$200 first priority term loan facility due 2012. The revolving credit facility is subject to a pricing grid and has current pricing of 1.25% above LIBOR and EURIBOR, respectively. The revolving credit facility also includes commitment fees of 0.375% on the unused portion of the facility. The proceeds from the refinancing were used to repay the Company's prior revolving credit facility and all but \$36 of the second and third priority senior secured notes issued by Crown European Holdings ("CEH"), an indirect wholly-owned subsidiary, and to pay premiums, fees and expenses associated with the refinancing. The Company recognized a loss of \$379 in connection with the refinancing, consisting of \$278 of premiums and fees and the write-off of \$101 of unamortized fees and unamortized interest rate swap termination costs related to the refinanced facilities and notes. During 2005, the Company also recognized an additional loss of \$4 from early extinguishments of debt for premiums paid to purchase certain unsecured notes.

The notes due 2013 and 2015 are senior obligations of Crown Americas, LLC and Crown Americas Capital Corporation, indirect, wholly-owned subsidiaries of the Company, and are guaranteed by substantially all U.S. subsidiaries. The revolving credit and term loan facilities contain financial covenants including an interest coverage ratio, a total net leverage ratio and a senior secured net leverage ratio.

The \$800 revolving credit facility includes provisions for letters of credit up to \$150 and €50. Outstanding letters of credit accrue interest at 1.25% as of December 31, 2007 and reduce the amount of borrowing capacity otherwise available. As of December 31, 2007, there were \$78 of outstanding letters of credit under the facility.

In connection with the November 2005 refinancing and repurchase of the significant majority of the then outstanding second and third priority senior secured notes, the \$38 of remaining notes outstanding as of December 31, 2007 no longer have any secured interest. CEH may redeem the \$35 of 2011 notes at any time and the \$3 of 2013 notes at any time prior to March 2008, by paying a make-whole premium. Thereafter, CEH may redeem some or all of the 2011 and 2013 notes at redemption prices initially representing a premium to principal equal to one-half of the applicable interest rate on the notes, declining annually thereafter.

In September 2004, the Company issued €460 of 6.25% first priority senior secured notes due 2011. The €460 of 6.25% notes issued in 2004, along with the \$38 of remaining principal on notes issued in 2003, are senior obligations of CEH and are guaranteed on a senior basis by Crown Holdings, Crown Cork, substantially all other U.S. subsidiaries, and certain subsidiaries in the U.K., Canada, France, Germany, Mexico, Switzerland and Belgium. The holders of the first priority senior secured notes have first priority liens on assets of certain of the guarantor subsidiaries and the stock of Crown Cork. CEH may redeem all or some of the first priority secured notes at any time by paying a make-whole premium. CEH is also required to make an offer to purchase the first priority secured notes upon the occurrence of certain change of control transactions or asset sales. The first priority note indentures contain covenants that limit the ability of the Company and its subsidiaries to, among other things, incur additional debt, pay dividends or repurchase capital stock, create liens, and engage in sale and leaseback transactions. In December 2006, the Company paid \$15 to the holders of the first priority senior secured notes to amend the indenture to conform certain provisions to comparable provisions in the senior secured facility. Among other things, the amendments allow the Company to incur an additional \$200 of indebtedness collateralized by the same liens as the notes and to make \$100 of additional restricted payments of any type, including restricted payments for the repurchase or other acquisition or retirement for value of shares of Company common stock.

## Crown Holdings, Inc.

### U. Derivative Financial Instruments

In the normal course of business the Company is subject to risk from adverse fluctuations in foreign exchange and interest rates and commodity prices. The Company manages these risks through a program that includes the use of derivative financial instruments, primarily swaps and forwards. Counterparties to these contracts are major financial institutions. These instruments are not used for trading or speculative purposes. The extent to which the Company uses such instruments is dependent upon its access to them in the financial markets and its use of other methods, such as netting exposures for foreign exchange risk and establishing sales arrangements that permit the pass-through to customers of changes in commodity prices and foreign exchange rates, to effectively achieve its goal of risk reduction. The Company's objective in managing its exposure to market risk is to limit the impact on earnings and cash flow.

**Cash Flow Hedges.** The Company designates certain derivative instruments as cash flow hedges of anticipated purchases or sales, including certain foreign currency denominated intercompany transactions. The ineffective portion of these hedges was not material and no components of the hedge instruments were excluded from the measurement of hedge effectiveness.

During 2005, the Company entered into four cross-currency swaps with a notional value of \$700. These swaps effectively convert fixed rate U.S. dollar intercompany debt into fixed rate euro intercompany debt. Since the terms of the swaps and the related debt are the same, the Company expects the swaps to be highly effective in reducing the related risk. In November 2006, the first of the four swaps matured and the Company paid \$11 at settlement. In November 2007, the second swap matured and the Company paid \$30 at settlement. At December 31, 2007, the two remaining swaps with an aggregate notional value of \$460 and maturing in November 2009 and 2010, had an aggregate fair value loss of \$100 and were reported in other non-current liabilities.

The Company has designated foreign exchange swaps and forwards and commodity forwards as cash flow hedges of anticipated foreign exchange and commodity transactions. Contracts outstanding at December 31, 2007 mature between one and twenty-seven months. At December 31, 2007 and 2006, the aggregate fair values of the commodity contracts were losses of \$19 and gains of \$1, respectively, and were reported in current liabilities and current assets consistent with the classification of the hedged items. The aggregate fair values of the foreign exchange contracts were losses of \$6 in 2007, and less than \$1 in 2006 and were reported in other current liabilities.

The changes in accumulated other comprehensive income/(loss) associated with cash flow hedging activities during 2007 and 2006 were as follows:

	<u>2007</u>	<u>2006</u>
Balance at January 1 .....	\$ 2	\$ 0
Current period changes in fair value, net of tax .....	( 120)	( 70)
Reclassifications to earnings, net of tax .....	113	72
Balance at December 31 .....	<u>(\$ 5)</u>	<u>\$ 2</u>

The current period changes in fair value and reclassification to earnings are primarily due to the foreign exchange component of the cross-currency swaps discussed above.

During the twelve months ending December 31, 2008, a loss of \$19 is expected to be reclassified to earnings with respect to commodity forwards. The actual amount that will be reclassified to earnings over the next twelve months may differ from this amount due to changing market conditions. No amounts were reclassified to earnings during 2007 in connection with forecasted transactions that were no longer considered probable.

**Fair Value Hedges.** The Company designates certain derivative financial instruments as fair value hedges of recognized assets, liabilities, and unrecognized firm commitments. Amounts excluded from the assessment and measurement of hedge effectiveness were reported in earnings and amounted to less than \$1 before income taxes in each of the last three years.



## Crown Holdings, Inc.

The Company designates certain foreign currency forward exchange contracts as fair value hedges of recognized foreign-denominated assets and liabilities, generally trade accounts receivable and payable and intercompany debt, and unrecognized foreign-denominated firm commitments. At December 31, 2007, the aggregate fair value of these contracts was a loss of \$3 and was reported in current liabilities. The aggregate fair value at December 31, 2006 was less than \$1. There was no impact on earnings in any of the last three years from a hedged firm commitment that no longer qualified as a fair value hedge.

**Undesignated Contracts.** At December 31, 2007, the Company had outstanding foreign currency forward exchange contracts that have not been designated as hedges. Changes in their fair value are reported currently in earnings as translation and exchange adjustments and offset the foreign currency gains or losses reported from the re-measurement of related intercompany balances. The aggregate fair value of these contracts at both December 31, 2007 and 2006 was a gain of \$13 and was reported in current assets.

### V. Earnings Per Share ("EPS")

The following table summarizes the basic and diluted earnings per share computations. Basic EPS excludes all potentially dilutive securities and is computed by dividing the net income/loss from continuing operations by the weighted average number of common shares outstanding during the period. Diluted EPS includes the effect of stock options and restricted stock as calculated under the treasury stock method.

	<u>2007</u>	<u>2006</u>	<u>2005</u>
Income/(loss) from continuing operations	<u>\$528</u>	<u>\$342</u>	<u>(\$ 312)</u>
Weighted average shares outstanding:			
Basic	161.3	165.5	165.9
Dilutive effect of stock options and restricted stock	<u>4.2</u>	<u>4.3</u>	
Diluted	<u>165.5</u>	<u>169.8</u>	<u>165.9</u>
Earnings/(loss) per share from continuing operations:			
Basic	<u>\$3.27</u>	<u>\$2.07</u>	<u>(\$1.88)</u>
Diluted	<u>\$3.19</u>	<u>\$2.01</u>	<u>(\$1.88)</u>

Potentially dilutive common stock equivalents resulting from stock options and restricted stock of 6.0 million in 2005 were excluded from diluted shares outstanding because they would have been anti-dilutive due to the net loss. In addition, common shares contingently issuable upon the exercise of outstanding stock options of 4.1 million in 2007, 2.4 million in 2006 and 3.6 million in 2005 had exercise prices above the average market price for the related periods and were also excluded.

For purposes of calculating assumed proceeds under the treasury stock method when determining the diluted weighted average shares outstanding, the Company excludes the impact of proforma deferred tax assets arising in connection with stock-based compensation.

### W. Pensions and Other Retirement Benefits

**Pensions.** The Company sponsors various pension plans covering certain U.S. and non-U.S. employees, and participates in certain multi-employer pension plans. The benefits under the Company plans are based primarily on years of service and either the employees' remuneration near retirement or a fixed dollar multiple. Contributions to multi-employer plans in which the Company and its subsidiaries participate are determined in accordance with the provisions of negotiated labor contracts or applicable local regulations.

# Crown Holdings, Inc.

A measurement date of December 31 was used for all plans presented below.

The components of pension expense were as follows:

<u>U.S.</u>	<u>2007</u>	<u>2006</u>	<u>2005</u>
Service cost.....	\$ 8	\$ 9	\$ 9
Interest cost.....	77	77	78
Expected return on plan assets .....	( 112)	( 108)	( 89)
Amortization of actuarial loss .....	46	56	62
Amortization of prior service cost .....	2	2	2
Cost attributable to settlements and curtailments .....	3		
Total pension expense .....	<u>\$ 24</u>	<u>\$ 36</u>	<u>\$ 62</u>

<u>Non-U.S.</u>	<u>2007</u>	<u>2006</u>	<u>2005</u>
Service cost.....	\$ 36	\$ 35	\$ 34
Interest cost.....	171	152	163
Expected return on plan assets .....	( 245)	( 215)	( 216)
Amortization of actuarial loss .....	29	33	46
Amortization of prior service credit .....	( 6)	( 6)	( 7)
Cost attributable to settlements and curtailments .....	1	2	3
Total pension expense/(credit) .....	<u>(\$ 14)</u>	<u>\$ 1</u>	<u>\$ 23</u>

Additional pension expense of \$4 was recognized in each of the last three years for multi-employer plans.

The projected benefit obligations, accumulated benefit obligations and fair value of plan assets for U.S. pension plans with accumulated benefit obligations in excess of plan assets were \$71, \$70 and \$0, respectively, as of December 31, 2007 and \$69, \$64 and \$0, respectively, as of December 31, 2006.

The projected benefit obligations, accumulated benefit obligations and fair value of plan assets for non-U.S. pension plans with accumulated benefit obligations in excess of plan assets were \$219, \$197 and \$92, respectively, as of December 31, 2007 and \$204, \$182 and \$81, respectively, as of December 31, 2006.

	<u>U.S. Plans</u>		<u>Non-U.S. Plans</u>	
<u>Projected Benefit Obligations</u>	<u>2007</u>	<u>2006</u>	<u>2007</u>	<u>2006</u>
Benefit obligations at January 1 .....	\$1,391	\$1,434	\$3,244	\$2,926
Service cost.....	8	9	36	35
Interest cost.....	77	77	171	152
Plan participants' contributions .....			7	7
Amendments.....	2			
Curtailments and settlements.....				( 6)
Actuarial (gain)/loss.....	( 61)	( 14)	60	( 75)
Benefits paid .....	( 116)	( 115)	( 185)	( 163)
Foreign currency exchange rate changes.....			92	368
Benefit obligations at December 31 .....	<u>\$1,301</u>	<u>\$1,391</u>	<u>\$3,425</u>	<u>\$3,244</u>
Accumulated benefit obligations at December 31	\$1,279	\$1,365	\$3,261	\$3,086

**Crown Holdings, Inc.**

<u>Plan Assets</u>	<u>U.S. Plans</u>		<u>Non-U.S. Plans</u>	
	<u>2007</u>	<u>2006</u>	<u>2007</u>	<u>2006</u>
Fair value of plan assets at January 1 .....	\$1,338	\$1,291	\$3,400	\$2,881
Actual return on plan assets.....	165	161	158	210
Employer contributions.....	7	1	58	89
Plan participants' contributions .....			7	7
Benefits paid .....	( 116)	( 115)	( 185)	( 163)
Foreign currency exchange rate changes.....			86	376
Fair value of plan assets at December 31 .....	<u>\$1,394</u>	<u>\$1,338</u>	<u>\$3,524</u>	<u>\$3,400</u>

Pension assets/(liabilities) included in the Consolidated Balance Sheets are:

	<u>2007</u>	<u>2006</u>
Non-current asset.....	\$390	\$295
Current liability .....	( 21)	( 14)
Non-current liability .....	( 177)	( 178)

The Company's current liability of \$21 as of December 31, 2007, represents the expected required payments to be made for unfunded plans over the next twelve months. Estimated required 2008 employer contributions are \$46 for the Company's funded plans.

Changes in the net loss and prior service credit for the Company's pension plans were:

	<u>2007</u>		<u>2006</u>		<u>2005</u>	
	<u>Net loss</u>	<u>Prior service credit</u>	<u>Net loss</u>	<u>Prior service credit</u>	<u>Net loss</u>	<u>Prior service credit</u>
Balance at January 1 .....	\$1,497	(\$16)	\$1,625	(\$15)	\$1,527	(\$30)
Reclassification to net period benefit cost .....	( 78)	5	( 89)	4	( 108)	5
Current year (gain)/loss .....	33		( 137)		287	5
Amendments .....		2				
Foreign currency translation .....	28	1	98	( 5)	( 81)	5
Balance at December 31 .....	<u>\$1,480</u>	<u>(\$ 8)</u>	<u>\$1,497</u>	<u>(\$16)</u>	<u>\$1,625</u>	<u>(\$15)</u>

As of December 31, 2007, accumulated other comprehensive loss included a charge of \$1,480 for unrecognized net losses and a credit of \$8 for prior service credits. The estimated portions of the net losses and prior service credits that are expected to be recognized as components of net periodic benefit cost/(credit) in 2008 are \$74 and (\$4), respectively.

The expected future benefit payments as of December 31, 2007 are:

	<u>U.S. Plans</u>	<u>Non-U.S. Plans</u>
2008 .....	128	181
2009 .....	125	190
2010 .....	134	197
2011 .....	109	203
2012 .....	108	209
2013 - 2018 .....	502	1,120

# **Crown Holdings, Inc.**

Additional information concerning the plan assets is presented below.

Plan assets	U.S. Plan Assets			Non-U.S. Plan Assets		
	Weighted Average			Weighted Average		
	2008	December 31,		2008	December 31,	
	Target Allocation	2007	2006	Target Allocation	2007	2006
Equity securities	70%	71%	73%	21%	21%	25%
Fixed income	12%	9%	9%	52%	54%	53%
Real estate	3%	2%	2%	8%	8%	9%
Other	15%	18%	16%	19%	17%	13%
	100%	100%	100%	100%	100%	100%

Plan assets included \$138 and \$128 of the Company's common stock at December 31, 2007 and 2006, respectively.

The non-U.S. plan asset percentages are those of the U.K. plan, which is the primary non-U.S. plan with assets. The "other" caption of plan assets primarily includes alternate investments such as private equities and hedge funds, but in the U.S. also included \$60 and \$30 of cash as of December 31, 2007 and 2006, respectively.

The Company's investment strategy in the U.S. plan is to provide the fund with an ability to earn attractive long-term rates of return on its assets at an acceptable level of risk. The equity portions of the program are diversified within the U.S. and international markets based on capitalization, valuations and other factors. Debt securities include all sectors of the marketable bond markets.

The Company's investment strategy in the U.K. plan is to invest 52% of its assets in investment grade bonds that match the liability profile. The remaining assets are invested in U.K. and global equities, real estate, high-yield bonds and alternate investments. The allocation of assets is determined after considering the plan's financial position, liability profile and funding requirements.

The weighted average actuarial assumptions used to calculate the benefit obligations at December 31 were:

<u>U.S.</u>	<u>2007</u>	<u>2006</u>	<u>2005</u>
Discount rate .....	6.5%	5.9%	5.7%
Compensation increase .....	3.0%	3.0%	3.0%
 <u>Non-U.S.</u>	 <u>2007</u>	 <u>2006</u>	 <u>2005</u>
Discount rate .....	5.2%	5.2%	5.0%
Compensation increase .....	3.5%	3.5%	3.5%

The weighted average actuarial assumptions used to calculate pension expense for each year were:

<u>U.S.</u>	<u>2007</u>	<u>2006</u>	<u>2005</u>
Discount rate .....	5.9%	5.7%	5.8%
Compensation increase .....	3.0%	3.0%	3.0%
Long-term rate of return .....	8.75%	8.75%	9.0%
 <u>Non-U.S.</u>	 <u>2007</u>	 <u>2006</u>	 <u>2005</u>
Discount rate .....	5.2%	5.0%	6.3%
Compensation increase .....	3.5%	3.5%	4.3%
Long-term rate of return .....	7.1%	7.1%	8.1%

# **Crown Holdings, Inc.**

The expected long-term rates of return are determined at each measurement date based on a review of the actual plan assets, the target allocation, and the historical returns of the capital markets, adjusted for current interest rates as appropriate.

**Other Postretirement Benefit Plans.** The Company sponsors unfunded plans to provide health care and life insurance benefits to pensioners and survivors. Generally, the medical plans pay a stated percentage of medical expenses reduced by deductibles and other coverages. Life insurance benefits are generally provided by insurance contracts. The Company reserves the right, subject to existing agreements, to change, modify or discontinue the plans. A measurement date of December 31 was used for the plans presented below.

The components of the net postretirement benefits cost were as follows:

	<u>2007</u>	<u>2006</u>	<u>2005</u>
Service cost.....	\$ 5	\$ 4	\$ 4
Interest cost.....	33	33	38
Amortization of prior service credit.....	( 17)	( 16)	( 13)
Amortization of actuarial loss.....	10	13	15
Total postretirement benefits cost.....	<u>\$31</u>	<u>\$34</u>	<u>\$44</u>

The following provides the components of the changes in the benefit obligations:

	<u>2007</u>	<u>2006</u>
Benefit obligations at January 1 .....	\$614	\$639
Service cost.....	5	4
Interest cost.....	33	33
Amendments .....	( 102)	3
Actuarial gain .....	( 42)	( 24)
Benefits paid .....	( 35)	( 43)
Foreign currency exchange rate changes.....	10	2
Benefit obligations at December 31 .....	<u>\$483</u>	<u>\$614</u>

Changes in the net loss and prior service credit for the Company's postretirement benefit plans were:

	<u>2007</u>		<u>2006</u>		<u>2005</u>	
	Net loss	Prior service credit	Net loss	Prior service credit	Net loss	Prior service credit
Balance at January 1	\$183	(\$119)	\$219	(\$136)	\$224	(\$ 99)
Reclassification to net periodic benefit cost	( 10)	17	( 13)	16	( 15)	13
Current year (gain)/loss	( 42)		( 24)		11	
Amendments		( 102)		3		( 52)
Foreign currency translation			1	( 2)	( 1)	2
Balance at December 31	<u>\$131</u>	<u>(\$204)</u>	<u>\$183</u>	<u>(\$119)</u>	<u>\$219</u>	<u>(\$136)</u>

As of December 31, 2007, accumulated comprehensive loss included a charge of \$131 for unrecognized losses and a credit of \$204 for prior service credits. The estimated portions of the net losses and prior service credits that are expected to be recognized as components of net periodic benefit cost/(credit) in 2008 are \$9 and (\$23), respectively.

The U.S. plans were amended in 2007 and 2005 to, among other things, require additional retiree contributions for medical and prescription drug costs.

## Crown Holdings, Inc.

The expected future benefit payments are \$45 in 2008, \$35 in 2009, \$35 in 2010, \$36 in 2011, \$36 in 2012 and \$189 in aggregate for 2013 through 2017. These payments are net of expected Medicare Part D subsidies of \$3 in 2008, \$4 in each of the years 2009 to 2012 and \$21 in aggregate for 2013 through 2017. Benefits paid of \$35 in 2007 are net of \$4 of subsidies.

The health care accumulated postretirement benefit obligations were determined at December 31, 2007 using health care trends of 9.4% decreasing to 5.1% over nine years. Increasing the assumed health care cost trend rate by one percentage point in each year would increase the accumulated postretirement benefit obligations by \$42 and the total of service and interest cost by \$4. Decreasing the assumed health care cost trend rate by one percentage point in each year would decrease the accumulated postretirement benefit obligations by \$35 and the total of service and interest cost by \$3.

The weighted average discount rates used to calculate the benefit obligations at the end of each year and the cost for each year are presented below.

	<u>2007</u>	<u>2006</u>	<u>2005</u>
Benefit obligations.....	6.5%	5.8%	5.6%
Cost.....	5.8%	5.6%	6.3%

**Employee Savings Plan.** The Company sponsors the Savings Investment Plan which covers substantially all domestic salaried employees who are at least 21 years of age. The Company matches up to 3.0% of a participant's compensation and the total Company contributions were \$2 in each of the last three years.

**Employee Stock Purchase Plan.** The Company sponsors an Employee Stock Purchase Plan which covers all domestic employees with one or more years of service who are non-officers and non-highly compensated as defined by the Internal Revenue Code. Eligible participants contribute 85% of the quarter-ending market price towards the purchase of each common share. The Company's contribution is equivalent to 15% of the quarter-ending market price. Total shares purchased under the plan in 2007 and 2006 were 37,091 and 52,149, respectively, and the Company's contributions were less than \$1 in both years.

### X. Income Taxes

As discussed in Note B, the Company adopted FIN 48 effective January 1, 2007, and recorded a charge of \$16 to its accumulated deficit. A reconciliation of unrecognized tax benefit follows.

	<u>Tax</u>	<u>Interest</u>	<u>Total</u>
Balance at January 1, 2007 prior to the adoption of FIN 48	\$47		\$47
Adoption of FIN 48 on January 1, 2007	17	\$1	18
Additions for current year tax positions	15		15
Settlements	( 5)		( 5)
Foreign currency translation	3		3
Balance at December 31, 2007	<u>\$77</u>	<u>\$1</u>	<u>\$78</u>

The settlements of \$5 include \$2 due to expirations of statutes of limitation.

The \$77 of unrecognized benefits as of December 31, 2007 includes \$36 related to a claim filed by the Company in the United States Court of Federal Claims to recover U.S. federal taxes paid in prior years. The Company's claim relates to the timing of the deductibility of certain payments made in 1993 to 1995. In addition to the \$36, the \$77 also includes reserves of \$41 for potential liabilities related to transfer pricing, withholding taxes and non-deductibility of expenses. The reserves of \$41 are reported in other non-current liabilities and include \$3 of penalties.

Interest and penalties are recorded in the statement of operations as interest expense and provision for income taxes, respectively. The total interest and penalties recorded in the statement of operations was \$1 for the year ended December 31, 2007, and less than \$1 for both 2006 and 2005.

# Crown Holdings, Inc.

The unrecognized benefits of \$77 as of December 31, 2007 include \$70 that, if recognized, would affect the effective tax rate. Of the \$7 of remaining unrecognized benefits, \$5 would have no effect due to valuation allowances in certain jurisdictions, and \$2 would reduce goodwill if recognized. The Company's unrecognized tax benefits are expected to increase in the next twelve months as it continues its current transfer pricing policies, and are expected to decrease as open tax years or claims are settled. The Company is unable to estimate a range of reasonably possible changes in its unrecognized tax benefits in the next twelve months as it is unable to predict when, or if, the tax authorities will commence their audits, the time needed for the audits, and the audit findings that will require settlement with the applicable tax authorities, if any. In addition, the Company is unable to estimate the timing of the resolution of its U.S. tax claim.

The tax years that remained subject to examination by major tax jurisdiction as of December 31, 2007 were 2002 and beyond for Canada; 2003 and beyond for Spain and Italy; 2004 and beyond for the United States, France and Germany; and 2005 and beyond for the United Kingdom.

Pre-tax income/(loss) for the years ended December 31 was taxed under the following jurisdictions:

	2007	2006	2005
U.S. ....	\$ 4	\$ 39	(\$ 60)
Foreign .....	197	296	( 202)
	<u>\$201</u>	<u>\$335</u>	<u>(\$262)</u>

The provision/(benefit) for income taxes consisted of the following:

## Current tax:

U.S. federal .....			
State and foreign .....	\$ 86	\$ 48	\$ 55
	<u>\$ 86</u>	<u>\$ 48</u>	<u>\$ 55</u>

## Deferred tax:

U.S. federal .....	(\$390)	(\$121)	(\$ 12)
State and foreign .....	( 96)	11	( 32)
	<u>( 486)</u>	<u>( 110)</u>	<u>( 44)</u>
Total .....	<u>(\$400)</u>	<u>(\$ 62)</u>	<u>\$ 11</u>

The provision for income taxes differs from the amount of income tax determined by applying the U.S. statutory federal income tax rate to pre-tax income/(loss) as a result of the following items:

	2007	2006	2005
U.S. statutory rate at 35% .....	\$ 70	\$117	(\$ 92)
Minimum pension liability adjustment .....		( 121)	
Valuation allowance .....	( 485)	( 11)	108
Impairment losses .....	36		
Tax on foreign income .....	( 35)	( 30)	( 20)
Tax rate changes .....	( 8)		
Withholding taxes .....	9	11	9
Other items, net .....	13	( 28)	6
Income tax provision/(benefit) .....	<u>(\$400)</u>	<u>(\$ 62)</u>	<u>\$ 11</u>

## Crown Holdings, Inc.

The valuation allowance caption for 2007 includes, among other items, the reversal of the U.S. valuation allowance discussed below. The impairment losses caption for 2007 is the effect of the non-deductible goodwill impairment charge discussed in Note D. The tax rate changes caption includes the effect of European tax rate changes in 2007, primarily in the U.K.

The minimum pension liability adjustment caption for 2006 includes a credit of \$121 due to the reversal of the Company's U.S. minimum pension liability adjustment under FAS No. 87. During 2001, the Company recorded a charge to establish a valuation allowance against its U.S. deferred tax assets, including \$121 of deferred tax assets related to its defined benefit pension plan that were originally recorded through other comprehensive income. Upon the elimination of the minimum pension liability at December 31, 2006 under FAS No. 87, the Company reclassified the credit of \$121 in accumulated other comprehensive income to the statement of operations. The valuation allowance caption for 2006 includes a credit of \$25 in the U.S. operations, partially offset by charges of \$14 in non-U.S. operations, including Canada and France. The other items caption for 2006 includes a benefit of \$13 for a reinvestment tax credit related to the investment of proceeds from the sale of a building in the European Food segment as discussed in Note P. The caption also includes, among other items, \$10 for the reversal of U.S. state tax contingencies upon completion of audits and \$5 for the partial reversal of a U.K. tax contingency, as discussed below, based on a settlement covering the remaining period under examination.

The other items caption for 2005 includes, among other things, a benefit of \$5 for the partial reversal of a U.K. tax contingency of \$16 that was provided during 2004. The reversal of \$5 was based on a settlement covering a portion of the period under examination.

The Company paid taxes, net of refunds, of \$90, \$71 and \$70 in 2007, 2006 and 2005, respectively.

The components of deferred taxes at December 31 are:

	2007		2006	
	Assets	Liabilities	Assets	Liabilities
Tax loss and credit carryforwards .....	\$769		\$688	
Postretirement and postemployment benefits....	200		261	
Depreciation .....	12	\$145	6	\$143
Pensions.....	54	118	33	76
Asbestos.....	70		69	
Inventories.....	1	27	2	17
Accruals and other .....	85	63	78	62
Valuation allowances .....	( 508)		( 925)	
Total .....	<u>\$683</u>	<u>\$353</u>	<u>\$212</u>	<u>\$298</u>

Prepaid expenses and other current assets includes \$18 and \$10 of deferred tax assets at December 31, 2007 and 2006, respectively.

Tax loss and credit carryforwards expire as follows: 2008 - \$4; 2009 - \$8; 2010 - \$1; 2011 - \$2; 2012 - \$24; thereafter - \$456; unlimited - \$274. The majority of those expiring after 2012 relate to \$208 of U.S. federal tax loss carryforwards that expire through 2025, and \$200 of state tax loss carryforwards. The unlimited carryforwards primarily include tax losses and credits in Europe. The tax loss carryforwards presented above exclude \$22 of windfall tax benefits that will be recorded in additional paid-in capital when realized.

Realization of any portion of the Company's deferred tax assets is dependent upon the availability of taxable income in the relevant jurisdictions. The Company considers all sources of taxable income, including (i) taxable income in any available carry back period, (ii) the reversal of taxable temporary differences, (iii) tax-planning strategies, and (iv) taxable income expected to be generated in the future other than from reversing temporary differences. The Company also considers whether there have been cumulative losses in recent years. The Company records a valuation allowance when it is more likely than not that some portion or all of the deferred tax assets will not be realized.



## **Crown Holdings, Inc.**

The Company's valuation allowances of \$508 as of December 31, 2007 include \$244 in the U.S., \$185 in France, \$31 in Canada and \$48 in other non-U.S. operations.

In the fourth quarter of 2007, the Company released a portion of its U.S. deferred tax valuation allowances based on management's determination that it was more likely than not that the related deferred tax benefits would be realized. Management's determination was based on cumulative earnings in recent years and its projections of future income. The valuation allowance release included a tax benefit of \$462 recorded in continuing operations. The Company still maintains a valuation allowance of \$244 against U.S. deferred tax assets that management believes will not be realized, primarily U.S. federal tax credits and state loss carryforwards that are expected to expire. Prior to the release in 2007, the Company had a full valuation allowance against its U.S. deferred tax assets since December 31, 2001. In France, the Company has a full valuation allowance against its net deferred tax assets of \$185, consisting of \$220 of deferred tax assets and \$35 of deferred tax liabilities. The deferred tax assets of \$220 include, among other items, \$188 of tax loss carryforwards. The Company's operations in France have had losses in recent years due to significant interest expense, foreign exchange losses and, in 2005, the payment of premiums to repay a portion of the Company's second and third priority senior secured notes as discussed in Note T. The Company determined that a full valuation allowance was appropriate for its French net deferred tax assets as of December 31, 2007 due to the recent losses and uncertainty regarding the amount and timing of future taxable income. Although the French deferred tax assets include \$188 of benefits for tax loss carryforwards that do not expire, the Company's underlying assumption is that there is not sufficient positive evidence of future taxable income, after considering all sources, to overcome the negative evidence of losses in recent years. Accordingly, the Company concluded that it was more likely than not that no portion of the net deferred tax assets will be realized. In Canada, the Company has a full valuation allowance against its net deferred tax assets of \$31, consisting of \$48 of deferred tax assets and \$17 of deferred tax liabilities. The deferred tax assets include, among other things, \$29 of tax loss carryforwards. The Company's operations in Canada have had losses in recent years due to decreased operating profits and increased interest expense from a corporate restructuring. The Company determined that a full valuation allowance was appropriate for its Canadian net deferred tax assets as of December 31, 2007 due to the recent losses and uncertainty regarding the amount and timing of future taxable income. The Company's underlying assumption is that there is not sufficient positive evidence of future taxable income, after considering all sources, to overcome the negative evidence of losses in recent years. Accordingly, the Company concluded that it was more likely than not that no portion of the net deferred tax assets will be realized. The valuation allowances of \$48 in other non-U.S. operations includes \$14 for tax loss carryforwards in an inactive entity in Europe where there are no current tax-planning strategies to utilize the losses, \$29 in other European entities, and \$5 in Asia.

Management's estimates of the appropriate valuation allowance in any jurisdiction involves a number of assumptions and judgments, including the amount and timing of future taxable income. Should future results differ from management's estimates at December 31, 2007, it is possible there could be future adjustments to the valuation allowances that would result in an increase or decrease in tax expense in the period such changes in estimates were made.

The cumulative amount of the Company's share of undistributed earnings of non-U.S. subsidiaries for which no deferred taxes have been provided was \$207 at December 31, 2007. Management has no plans to distribute such earnings in the foreseeable future.

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### **Y. Segment Information**

The Company's business is organized geographically within three divisions, Americas, European and Asia-Pacific. Within the Americas and European divisions, the Company has determined that it has the following reportable segments organized along a combination of product lines and geographic areas: Americas Beverage and North America Food within the Americas, and European Beverage, European Food and European Specialty Packaging within Europe. Prior periods shown below have been conformed to the current presentation.

# Crown Holdings, Inc.

The Company evaluates performance and allocates resources based on segment income. Segment income is defined by the Company as gross profit less selling and administrative expenses. Transactions between operating segments are not material.

The tables below present information about operating segments for the years ended December 31, 2007, 2006 and 2005:

<u>2007</u>	External sales	Segment assets	Depreciation and amortization	Capital expenditures	Segment income
Americas Beverage.....	\$1,751	\$1,082	\$ 47	\$ 40	\$182
North America Food.....	849	538	21	9	76
European Beverage.....	1,436	1,542	46	13	185
European Food.....	1,991	1,838	53	37	173
European Specialty Packaging.....	460	231	10	9	14
Total reportable segments.....	6,487	5,231	177	108	\$630
Non-reportable segments.....	1,240	895	37	42	
Corporate and unallocated items.....		875	15	6	
Total.....	\$7,727	\$7,001	\$229	\$156	

<u>2006</u>	External sales	Segment assets	Depreciation and amortization	Capital expenditures	Segment income
Americas Beverage.....	\$1,600	\$1,028	\$ 48	\$ 32	\$160
North America Food.....	821	529	22	13	70
European Beverage.....	1,174	1,511	45	58	122
European Food.....	1,885	1,831	51	24	174
European Specialty Packaging.....	427	230	9	9	23
Total reportable segments.....	5,907	5,129	175	136	\$549
Non-reportable segments.....	1,075	872	36	46	
Corporate and unallocated items.....		408	16	9	
Total.....	\$6,982	\$6,409	\$227	\$191	

<u>2005</u>	External sales	Segment assets	Depreciation and amortization	Capital expenditures	Segment income
Americas Beverage.....	\$1,674	\$ 983	\$ 49	\$ 25	\$197
North America Food.....	772	523	21	13	42
European Beverage.....	963	1,363	38	81	140
European Food.....	1,842	1,626	62	20	198
European Specialty Packaging.....	406	188	9	5	20
Total reportable segments.....	5,657	4,683	179	144	\$597
Non-reportable segments.....	1,018	782	39	46	
Corporate and unallocated items.....		1,123	19	2	
Total.....	\$6,675	\$6,588	\$237	\$192	

"Corporate and unallocated items" includes corporate and division administrative costs, technology costs, and unallocated items such as the U.S. and U.K. pension plan costs.

# Crown Holdings, Inc.

A reconciliation of segment income to consolidated income/(loss) from continuing operations before income taxes, minority interests and equity earnings for the years ended December 31, 2007, 2006 and 2005 follows:

	2007	2006	2005
Segment income of reportable segments .....	\$630	\$549	\$597
Segment income of non-reportable segments .....	133	119	121
Corporate and other unallocated items .....	( 121)	( 92)	( 146)
Provision for asbestos .....	( 29)	( 10)	( 10)
Provision for restructuring .....	( 20)	( 15)	( 13)
Provision for asset impairments and loss/gain on sale of assets ....	( 100)	64	18
Loss from early extinguishments of debt .....			( 383)
Interest expense .....	( 318)	( 286)	( 361)
Interest income .....	14	12	9
Translation and exchange adjustments .....	12	( 6)	( 94)
Income/(loss) from continuing operations before income taxes, minority interest and equity earnings .....	<u>\$201</u>	<u>\$335</u>	<u>(\$262)</u>

For the years ended December 31, 2007, 2006 and 2005, no one customer accounted for more than 10% of the Company's consolidated net sales.

Sales by major product were:

	2007	2006	2005
Metal beverage cans and ends .....	\$3,596	\$3,104	\$2,925
Metal food cans and ends .....	2,591	2,447	2,355
Other metal packaging .....	1,389	1,312	1,280
Plastic packaging .....	61	54	53
Other products .....	90	65	62
Consolidated net sales .....	<u>\$7,727</u>	<u>\$6,982</u>	<u>\$6,675</u>

Sales and long-lived assets for the major countries in which the Company operates were:

	Net Sales			Long-lived Assets		
	2007	2006	2005	2007	2006	2005
United States .....	\$2,098	\$1,974	\$2,008	\$ 333	\$ 362	\$ 422
United Kingdom .....	855	778	799	196	217	222
France .....	679	629	612	112	114	126
Other .....	4,095	3,601	3,256	963	915	837
Consolidated total .....	<u>\$7,727</u>	<u>\$6,982</u>	<u>\$6,675</u>	<u>\$1,604</u>	<u>\$1,608</u>	<u>\$1,607</u>

# Crown Holdings, Inc.

## Z. Condensed Combining Financial Information

Crown European Holdings (Issuer), a 100% owned subsidiary of the Company, has outstanding senior secured notes that are fully and unconditionally guaranteed by Crown and certain subsidiaries. The guarantor information that follows includes substantially all subsidiaries in the United States, the United Kingdom, France, Germany, Belgium, Canada, Mexico and Switzerland. The guarantors are 100% owned by the Company and the guarantees are made on a joint and several basis. The following condensed combining financial statements:

- statements of operations and cash flows for the years ended December 31, 2007, 2006 and 2005, and
- balance sheets as of December 31, 2007 and 2006

are presented on the following pages to comply with the Company's requirements under Rule 3-10 of Regulation S-X.

### CONDENSED COMBINING STATEMENT OF OPERATIONS

For the year ended December 31, 2007  
(in millions)

	Parent	Issuer	Guarantors	Non Guarantors	Eliminations	Total Company
<b>Net sales</b> .....			\$4,602	\$3,125		\$7,727
Cost of products sold, excluding depreciation and amortization .....		(\$ 23)	3,864	2,630		6,471
Depreciation and amortization.....			138	91		229
<b>Gross profit</b> .....		23	600	404		1,027
Selling and administrative expense .....		( 1)	287	99		385
Provision for asbestos .....			29			29
Provision for restructuring.....			5	15		20
Provision for asset impairments and loss/gain on sale of assets .....			37	63		100
Net interest expense.....		100	196	8		304
Technology royalty.....			( 37)	37		
Translation and exchange adjustments.....		( 1)	( 8)	( 3)		( 12)
<b>Income/(loss) before income taxes, minority interests and equity earnings ..</b>		( 75)	91	185		201
Provision/(benefit) for income taxes .....			( 458)	58		( 400)
Equity earnings/(loss) .....	\$528	95	( 21)		(\$602)	
<b>Income before minority interests and equity earnings</b> .....	528	20	528	127	( 602)	601
Minority interests and equity earnings .....				( 73)		( 73)
<b>Net income</b> .....	<u>\$528</u>	<u>\$ 20</u>	<u>\$ 528</u>	<u>\$ 54</u>	<u>(\$602)</u>	<u>\$ 528</u>

**Crown Holdings, Inc.**

**CONDENSED COMBINING STATEMENT OF OPERATIONS**

**For the year ended December 31, 2006**  
(in millions)

	Parent	Issuer	Guarantors	Non Guarantors	Eliminations	Total Company
<b>Net sales</b> .....			\$4,277	\$2,705		\$6,982
Cost of products sold, excluding depreciation and amortization .....		(\$ 21)	3,608	2,276		5,863
Depreciation and amortization.....			143	84		227
<b>Gross profit</b> .....		21	526	345		892
Selling and administrative expense.....		2	239	75		316
Provision for asbestos .....			10			10
Provision for restructuring.....			6	9		15
Provision for asset impairments and loss/gain on sale of assets .....			( 3)	( 61)		( 64)
Net interest expense.....		71	200	3		274
Technology royalty.....			( 29)	29		
Translation and exchange adjustments.....		14	( 10)	2		6
<b>Income/(loss) from continuing operations before income taxes, minority interests and equity earnings</b> .....		( 66)	113	288		335
Provision/(benefit) for income taxes.....			( 113)	51		( 62)
Equity earnings.....	\$309	177	115		(\$601)	
<b>Income from continuing operations before minority interests and equity earnings</b> ...	309	111	341	237	( 601)	397
Minority interests and equity earnings.....				( 55)		( 55)
<b>Income from continuing operations</b> .....	309	111	341	182	( 601)	342
<b>Discontinued operations</b>						
Loss before income taxes.....			( 34)			( 34)
Provision/(benefit) for income taxes.....			( 2)	1		( 1)
<b>Net income</b> .....	<u>\$309</u>	<u>\$111</u>	<u>\$ 309</u>	<u>\$ 181</u>	<u>(\$601)</u>	<u>\$ 309</u>

**Crown Holdings, Inc.**

**CONDENSED COMBINING STATEMENT OF OPERATIONS**

**For the year ended December 31, 2005**  
**(in millions)**

	Parent	Issuer	Guarantors	Non Guarantors	Eliminations	Total Company
<b>Net sales</b> .....			\$4,295	\$2,380		\$6,675
Cost of products sold, excluding depreciation and amortization .....		(\$ 19)	3,607	1,939		5,527
Depreciation and amortization.....			154	83		237
<b>Gross profit</b> .....		19	534	358		911
Selling and administrative expense .....			255	84		339
Provision for asbestos .....			10			10
Provision for restructuring.....			11	2		13
Provision for asset impairments and loss/gain on sale of assets .....			( 11)	( 7)		( 18)
Loss from early extinguishments of debt....		301	78	4		383
Net interest expense.....		109	235	8		352
Technology royalty.....			( 30)	30		
Translation and exchange adjustments.....		11	51	32		94
<b>Income/(loss) from continuing operations before income taxes, minority interests and equity earnings</b> .....		( 402)	( 65)	205		( 262)
Provision/(benefit) for income taxes .....			( 45)	56		11
Equity earnings/(loss) .....	(\$354)	155	( 339)		\$538	
<b>Income/(loss) from continuing operations before minority interests and equity earnings</b> .....	( 354)	( 247)	( 359)	149	538	( 273)
Minority interests and equity earnings .....			11	( 50)		( 39)
<b>Income/(loss) from continuing operations...</b>	( 354)	( 247)	( 348)	99	538	( 312)
<b>Discontinued operations</b>						
Income/(loss) before income taxes.....		( 34)	16	( 3)		( 21)
Provision/(benefit) for income taxes .....			22	( 1)		21
<b>Net income/(loss)</b> .....	(\$354)	(\$281)	(\$ 354)	\$ 97	\$538	(\$ 354)

**Crown Holdings, Inc.**

**CONDENSED COMBINING BALANCE SHEET**

**As of December 31, 2007**  
(in millions)

	<u>Parent</u>	<u>Issuer</u>	<u>Guarantors</u>	<u>Non Guarantors</u>	<u>Eliminations</u>	<u>Total Company</u>
<b>Assets</b>						
<b>Current assets</b>						
Cash and cash equivalents .....		\$ 13	\$ 81	\$ 363		\$ 457
Receivables, net .....		75	78	520		673
Intercompany receivables .....		2	70	47	(\$ 119)	
Inventories .....			590	440		1,030
Prepaid expenses and other current assets .....	\$ 2	15	52	5		74
<b>Total current assets</b> .....	<u>2</u>	<u>105</u>	<u>871</u>	<u>1,375</u>	<u>( 119)</u>	<u>2,234</u>
Intercompany debt receivables .....		1,624	1,924	381	( 3,929)	
Investments .....	225	2,724	( 554)		( 2,395)	
Goodwill .....			1,582	617		2,199
Property, plant and equipment, net .....			842	762		1,604
Other non-current assets .....		9	886	47		942
<b>Total</b> .....	<u>\$227</u>	<u>\$4,462</u>	<u>\$5,551</u>	<u>\$3,182</u>	<u>(\$6,443)</u>	<u>\$6,979</u>
<b>Liabilities and shareholders' equity</b>						
<b>Current liabilities</b>						
Short-term debt .....		\$ 14	\$ 2	\$ 29		\$ 45
Current maturities of long-term debt .....		4	5	29		38
Accounts payable and accrued liabilities .....	\$ 23	22	1,161	794		2,000
Intercompany payables .....		1	46	72	(\$ 119)	
<b>Total current liabilities</b> .....	<u>23</u>	<u>41</u>	<u>1,214</u>	<u>924</u>	<u>( 119)</u>	<u>2,083</u>
Long-term debt, excluding current maturities .....		1,116	2,157	81		3,354
Long-term intercompany debt .....	189	2,480	1,026	234	( 3,929)	
Postretirement and pension liabilities .....			606	19		625
Other non-current liabilities .....		100	323	156		579
Minority interests .....				323		323
Commitments and contingent liabilities .....						
Shareholders' equity .....	15	725	225	1,445	( 2,395)	15
<b>Total</b> .....	<u>\$227</u>	<u>\$4,462</u>	<u>\$5,551</u>	<u>\$3,182</u>	<u>(\$6,443)</u>	<u>\$6,979</u>

**Crown Holdings, Inc.**

**CONDENSED COMBINING BALANCE SHEET**

**As of December 31, 2006**  
(in millions)

	<u>Parent</u>	<u>Issuer</u>	<u>Guarantors</u>	<u>Non Guarantors</u>	<u>Eliminations</u>	<u>Total Company</u>
<b>Assets</b>						
<b>Current assets</b>						
Cash and cash equivalents .....			\$ 97	\$ 310		\$ 407
Receivables, net.....		\$ 98	109	482		689
Intercompany receivables.....		1	55	31	(\$ 87)	
Inventories .....			540	417		957
Prepaid expenses and other current assets.....	\$ 1	23	34	2		60
<b>Total current assets</b> .....	<u>1</u>	<u>122</u>	<u>835</u>	<u>1,242</u>	<u>( 87)</u>	<u>2,113</u>
Intercompany debt receivables .....		1,308	1,468	257	( 3,033)	
Investments.....	( 374)	2,696	( 425)		( 1,897)	
Goodwill .....			1,547	638		2,185
Property, plant and equipment, net.....			888	720		1,608
Other non-current assets .....		25	398	80		503
<b>Total</b> .....	<u>(\$373)</u>	<u>\$4,151</u>	<u>\$4,711</u>	<u>\$2,937</u>	<u>(\$5,017)</u>	<u>\$6,409</u>
<b>Liabilities and shareholders' equity/(deficit)</b>						
<b>Current liabilities</b>						
Short-term debt.....		\$ 12	\$ 5	\$ 61		\$ 78
Current maturities of long-term debt.....		4	5	34		43
Accounts payable and accrued liabilities.....	\$ 4	42	1,095	694		1,835
Intercompany payables .....		2	29	56	(\$ 87)	
<b>Total current liabilities</b> .....	<u>4</u>	<u>60</u>	<u>1,134</u>	<u>845</u>	<u>( 87)</u>	<u>1,956</u>
Long-term debt, excluding current maturities .....		1,096	2,256	68		3,420
Long-term intercompany debt.....	117	2,107	631	178	( 3,033)	
Postretirement and pension liabilities .....			735	14		749
Other non-current liabilities.....		55	329	115		499
Minority interests .....				279		279
Commitments and contingent liabilities .....						
Shareholders' equity/(deficit) .....	( 494)	833	( 374)	1,438	( 1,897)	( 494)
<b>Total</b> .....	<u>(\$373)</u>	<u>\$4,151</u>	<u>\$4,711</u>	<u>\$2,937</u>	<u>(\$5,017)</u>	<u>\$6,409</u>



**Crown Holdings, Inc.**

**CONDENSED COMBINING STATEMENT OF CASH FLOWS**

For the year ended December 31, 2007  
(In millions)

	<u>Parent</u>	<u>Issuer</u>	<u>Guarantors</u>	<u>Non Guarantors</u>	<u>Eliminations</u>	<u>Total Company</u>
Net cash provided by/(used for) operating activities....	\$ 32	(\$53)	\$204	\$326		\$509
<b>Cash flows from investing activities</b>						
Capital expenditures.....			( 66)	( 90)		( 156)
Proceeds from sale of business .....			7			7
Proceeds from sale of property, plant and equipment ....			5	61		66
Intercompany investing activities .....		92	83	41	(\$216)	
Other.....				( 11)		( 11)
<b>Net cash provided by/(used for) investing activities .....</b>		<u>92</u>	<u>29</u>	<u>1</u>	<u>( 216)</u>	<u>( 94)</u>
<b>Cash flows from financing activities</b>						
Proceeds from long-term debt.....				48		48
Payments of long-term debt .....		( 4)	( 5)	( 46)		( 55)
Net change in revolving credit facility and short-term debt .....		( 88)	( 122)	( 7)		( 217)
Net change in long-term intercompany balances.....	72	96	( 126)	( 42)		
Dividends paid.....				( 216)	216	
Common stock issued.....	14					14
Common stock repurchased .....	( 118)					( 118)
Dividends paid to minority interests .....				( 38)		( 38)
Other.....		( 30)				( 30)
<b>Net cash used for financing activities .....</b>	<u>( 32)</u>	<u>( 26)</u>	<u>( 253)</u>	<u>( 301)</u>	<u>216</u>	<u>( 396)</u>
Effect of exchange rate changes on cash and cash equivalents .....			4	27		31
Net change in cash and cash equivalents.....		13	( 16)	53		50
Cash and cash equivalents at January 1 .....			97	310		407
<b>Cash and cash equivalents at December 31.....</b>	<u>\$ 0</u>	<u>\$13</u>	<u>\$ 81</u>	<u>\$363</u>	<u>\$ 0</u>	<u>\$457</u>

**Crown Holdings, Inc.**

**CONDENSED COMBINING STATEMENT OF CASH FLOWS**

**For the year ended December 31, 2006**  
(in millions)

	<u>Parent</u>	<u>Issuer</u>	<u>Guarantors</u>	<u>Non-Guarantors</u>	<u>Eliminations</u>	<u>Total Company</u>
<b>Net cash provided by/(used for) operating activities</b>	<u>(\$ 3)</u>	<u>(\$ 50)</u>	<u>\$100</u>	<u>\$308</u>		<u>\$355</u>
<b>Cash flows from investing activities</b>						
Capital expenditures			( 76)	( 115)		( 191)
Proceeds from sale of business			6	1		7
Proceeds from sale of property, plant and equipment			39	42		81
Intercompany investing activities		( 51)	470	( 251)	(\$168)	
Other		( 11)		3		( 8)
<b>Net cash provided by/(used for) investing activities</b>		<u>( 62)</u>	<u>439</u>	<u>( 320)</u>	<u>( 168)</u>	<u>( 111)</u>
<b>Cash flows from financing activities</b>						
Proceeds from long-term debt			200	32		232
Payments of long-term debt		( 4)	( 111)	( 28)		( 143)
Net change in revolving credit facility and short-term debt		66	( 160)	13		( 81)
Net change in long-term intercompany balances	120	65	( 335)	150		
Debt issue costs			( 4)			( 4)
Dividends paid			( 99)	( 69)	168	
Common stock issued	18					18
Common stock repurchased	( 135)					( 135)
Dividends paid to minority interests				( 29)		( 29)
Other		( 15)	( 1)			( 16)
<b>Net cash provided by/(used for) financing activities</b>	<u>3</u>	<u>112</u>	<u>( 510)</u>	<u>69</u>	<u>168</u>	<u>( 158)</u>
Effect of exchange rate changes on cash and cash equivalents			1	26		27
<b>Net change in cash and cash equivalents</b>			<u>30</u>	<u>83</u>		<u>113</u>
<b>Cash and cash equivalents at January 1</b>			<u>67</u>	<u>227</u>		<u>294</u>
<b>Cash and cash equivalents at December 31</b>	<u>\$ 0</u>	<u>\$ 0</u>	<u>\$ 97</u>	<u>\$310</u>	<u>\$ 0</u>	<u>\$407</u>

**Crown Holdings, Inc.**

**CONDENSED COMBINING STATEMENT OF CASH FLOWS**

**For the year ended December 31, 2005**  
(in millions)

	<u>Parent</u>	<u>Issuer</u>	<u>Guarantors</u>	<u>Non Guarantors</u>	<u>Eliminations</u>	<u>Total Company</u>
<b>Net cash provided by/(used for) operating activities ...</b>	<b>\$ 3</b>	<b>(\$ 406)</b>	<b>(\$ 1)</b>	<b>\$282</b>		<b>(\$ 122)</b>
<b>Cash flows from investing activities</b>						
Capital expenditures .....			( 100)	( 92)		( 192)
Proceeds from sale of business .....		72	483	72		627
Proceeds from sale of property, plant and equipment....			31	9		40
Intercompany investing activities .....		189	34		(\$223)	
Other .....			( 2)	( 9)		( 11)
<b>Net cash provided by/(used for) investing activities .....</b>		<b>261</b>	<b>446</b>	<b>( 20)</b>	<b>( 223)</b>	<b>464</b>
<b>Cash flows from financing activities</b>						
Proceeds from long-term debt .....		335	1,265	16		1,616
Payments of long-term debt .....		( 2,109)	( 129)	( 30)		( 2,268)
Net change in short-term debt .....		13	257	( 22)		248
Net change in long-term intercompany balances .....	19	1,905	( 1,886)	( 38)		
Debt issue costs .....			( 26)			( 26)
Dividends paid .....			( 23)	( 200)	223	
Common stock issued .....	16					16
Common stock repurchased .....	( 38)					( 38)
Dividends paid to minority interests .....				( 45)		( 45)
<b>Net cash provided by/(used for) financing activities .....</b>	<b>( 3)</b>	<b>144</b>	<b>( 542)</b>	<b>( 319)</b>	<b>223</b>	<b>( 497)</b>
Effect of exchange rate changes on cash and cash equivalents .....			( 4)	( 18)		( 22)
<b>Net change in cash and cash equivalents .....</b>	<b>( 1)</b>	<b>( 101)</b>	<b>( 75)</b>			<b>( 177)</b>
<b>Cash and cash equivalents at January 1 .....</b>	<b>1</b>	<b>168</b>	<b>302</b>			<b>471</b>
<b>Cash and cash equivalents at December 31 .....</b>	<b>\$ 0</b>	<b>\$ 0</b>	<b>\$ 67</b>	<b>\$227</b>	<b>\$ 0</b>	<b>\$ 294</b>

# Crown Holdings, Inc.

Crown Cork & Seal Company, Inc. (Issuer), a 100% owned subsidiary has outstanding registered debt that is fully and unconditionally guaranteed by Crown Holdings, Inc. (Parent). No other subsidiary guarantees the debt. The following condensed combining financial statements:

- statements of operations and cash flows for the years ended December 31, 2007, 2006 and 2005, and
- balance sheets as of December 31, 2007 and 2006

are presented on the following pages to comply with the Company's requirements under Rule 3-10 of Regulation S-X.

## CONDENSED COMBINING STATEMENT OF OPERATIONS

For the year ended December 31, 2007  
(in millions)

	<u>Parent</u>	<u>Issuer</u>	<u>Non Guarantors</u>	<u>Eliminations</u>	<u>Total Company</u>
<b>Net sales</b> .....			\$7,727		\$7,727
Cost of products sold, excluding depreciation and amortization .....			6,471		6,471
Depreciation and amortization .....			229		229
<b>Gross profit</b> .....			1,027		1,027
Selling and administrative expense .....		\$ 13	372		385
Provision for asbestos.....		29			29
Provision for restructuring .....			20		20
Provision for asset impairments and loss/gain on sale of assets.....			100		100
Net interest expense .....		68	236		304
Translation and exchange adjustments .....			( 12)		( 12)
<b>Income/(loss) before income taxes, minority interests and equity earnings</b> .....		( 110)	311		201
Provision/(benefit) for income taxes .....		( 505)	105		( 400)
Equity earnings .....	\$528	133		(\$661)	
<b>Income before minority interests and equity earnings</b> ..	528	528	206	( 661)	601
Minority interests and equity earnings .....			( 73)		( 73)
<b>Net income</b> .....	<u>\$528</u>	<u>\$528</u>	<u>\$ 133</u>	<u>(\$661)</u>	<u>\$ 528</u>

**Crown Holdings, Inc.**

**CONDENSED COMBINING STATEMENT OF OPERATIONS**

**For the year ended December 31, 2006**  
**(in millions)**

	<u>Parent</u>	<u>Issuer</u>	<u>Non Guarantors</u>	<u>Eliminations</u>	<u>Total Company</u>
<b>Net sales</b> .....			\$6,982		\$6,982
Cost of products sold, excluding depreciation and amortization .....			5,863		5,863
Depreciation and amortization .....			227		227
<b>Gross profit</b> .....			892		892
Selling and administrative expense .....		\$ 9	307		316
Provision for asbestos.....		10			10
Provision for restructuring .....			15		15
Provision for asset impairments and loss/gain on sale of assets.....			( 64)		( 64)
Net interest expense .....		64	210		274
Translation and exchange adjustments .....			6		6
<b>Income/(loss) from continuing operations before income taxes, minority interests and equity earnings</b> .....		( 83)	418		335
Income tax benefit.....		( 43)	( 19)		( 62)
Equity earnings .....	\$309	346		(\$655)	
<b>Income from continuing operations before minority interests and equity earnings</b> .....	309	306	437	( 655)	397
Minority interests and equity earnings .....		3	( 58)		( 55)
<b>Income from continuing operations</b> .....	309	309	379	( 655)	342
<b>Discontinued operations</b>					
Loss before income taxes .....			( 34)		( 34)
Income tax benefit.....			( 1)		( 1)
<b>Net income</b> .....	<u>\$309</u>	<u>\$309</u>	<u>\$ 346</u>	<u>(\$655)</u>	<u>\$ 309</u>

**Crown Holdings, Inc.**

**CONDENSED COMBINING STATEMENT OF OPERATIONS**

**For the year ended December 31, 2005**  
(in millions)

	<u>Parent</u>	<u>Issuer</u>	<u>Non Guarantors</u>	<u>Eliminations</u>	<u>Total Company</u>
<b>Net sales</b> .....			\$6,675		\$6,675
Cost of products sold, excluding depreciation and amortization .....			5,527		5,527
Depreciation and amortization .....			237		237
<b>Gross profit</b> .....			911		911
Selling and administrative expense .....		\$ 6	333		339
Provision for asbestos .....		10			10
Provision for restructuring .....			13		13
Provision for asset impairments and loss/gain on sale of assets .....			( 18)		( 18)
Loss/(gain) from early extinguishments of debt .....		( 505)	888		383
Net interest expense .....		269	83		352
Translation and exchange adjustments .....			94		94
<b>Income/(loss) from continuing operations before income taxes, minority interests and equity earnings</b> .....		220	( 482)		( 262)
Provision for income taxes .....			11		11
Equity loss .....	(\$354)	( 585)		\$939	
<b>Loss from continuing operations before minority interests and equity earnings</b> .....	( 354)	( 365)	( 493)	939	( 273)
Minority interests and equity earnings .....		11	( 50)		( 39)
<b>Loss from continuing operations</b> .....	( 354)	( 354)	( 543)	939	( 312)
<b>Discontinued operations</b>					
Loss before income taxes .....			( 21)		( 21)
Provision for income taxes .....			21		21
<b>Net loss</b> .....	(\$354)	(\$354)	(\$ 585)	\$939	(\$ 354)

Crown Holdings, Inc.

CONDENSED COMBINING BALANCE SHEET

As of December 31, 2007  
(in millions)

	Parent	Issuer	Non Guarantors	Eliminations	Total Company
<b>Assets</b>					
<b>Current assets</b>					
Cash and cash equivalents .....			\$ 457		\$ 457
Receivables, net .....			673		673
Inventories .....			1,030		1,030
Prepaid expenses and other current assets .....	\$ 2		72		74
<b>Total current assets</b> .....	<u>2</u>		<u>2,232</u>		<u>2,234</u>
Intercompany debt receivables .....			375	(\$ 375)	
Investments .....	225	\$ 968		( 1,193)	
Goodwill .....			2,199		2,199
Property, plant and equipment, net .....			1,604		1,604
Other non-current assets .....		416	526		942
<b>Total</b> .....	<u>\$227</u>	<u>\$1,384</u>	<u>\$6,936</u>	<u>(\$1,568)</u>	<u>\$6,979</u>
<b>Liabilities and shareholders' equity</b>					
<b>Current liabilities</b>					
Short-term debt .....			\$ 45		\$ 45
Current maturities of long-term debt .....			38		38
Accounts payable and accrued liabilities .....	\$ 23	\$ 69	1,908		2,000
<b>Total current liabilities</b> .....	<u>23</u>	<u>69</u>	<u>1,991</u>		<u>2,083</u>
Long-term debt, excluding current maturities .....		698	2,656		3,354
Long-term intercompany debt .....	189	186		(\$ 375)	
Postretirement and pension liabilities .....			625		625
Other non-current liabilities .....		206	373		579
Minority interests .....			323		323
Commitments and contingent liabilities .....					
Shareholders' equity .....	15	225	968	( 1,193)	15
<b>Total</b> .....	<u>\$227</u>	<u>\$1,384</u>	<u>\$6,936</u>	<u>(\$1,568)</u>	<u>\$6,979</u>

**Crown Holdings, Inc.**

**CONDENSED COMBINING BALANCE SHEET**

**As of December 31, 2006**  
**(in millions)**

	<u>Parent</u>	<u>Issuer</u>	<u>Non Guarantors</u>	<u>Eliminations</u>	<u>Total Company</u>
<b>Assets</b>					
<b>Current assets</b>					
Cash and cash equivalents .....			\$ 407		\$ 407
Receivables, net.....			689		689
Inventories .....			957		957
Prepaid expenses and other current assets.....	\$ 1		59		60
<b>Total current assets</b> .....	<u>1</u>		<u>2,112</u>		<u>2,113</u>
Intercompany debt receivables .....			262	(\$262)	
Investments.....	( 374)	\$669		( 295)	
Goodwill .....			2,185		2,185
Property, plant and equipment, net.....			1,608		1,608
Other non-current assets .....		34	469		503
<b>Total</b> .....	<u>(\$373)</u>	<u>\$703</u>	<u>\$6,636</u>	<u>(\$557)</u>	<u>\$6,409</u>
<b>Liabilities and shareholders' equity/(deficit)</b>					
<b>Current liabilities</b>					
Short-term debt.....			\$ 78		\$ 78
Current maturities of long-term debt.....		\$ 1	42		43
Accounts payable and accrued liabilities.....	\$ 4	36	1,795		1,835
<b>Total current liabilities</b> .....	<u>4</u>	<u>37</u>	<u>1,915</u>		<u>1,956</u>
Long-term debt, excluding current maturities .....		698	2,722		3,420
Long-term intercompany debt .....	117	145		(\$262)	
Postretirement and pension liabilities .....			749		749
Other non-current liabilities .....		197	302		499
Minority interests .....			279		279
Commitments and contingent liabilities .....					
Shareholders' equity/(deficit) .....	( 494)	( 374)	669	( 295)	( 494)
<b>Total</b> .....	<u>(\$373)</u>	<u>\$703</u>	<u>\$6,636</u>	<u>(\$557)</u>	<u>\$6,409</u>



**Crown Holdings, Inc.**

**CONDENSED COMBINING STATEMENT OF CASH FLOWS**

**For the year ended December 31, 2007**  
**(in millions)**

	<u>Parent</u>	<u>Issuer</u>	<u>Non Guarantors</u>	<u>Eliminations</u>	<u>Total Company</u>
<b>Net cash provided by/(used for) operating activities.....</b>	<b>\$ 32</b>	<b>(\$65)</b>	<b>\$542</b>		<b>\$509</b>
<b>Cash flows from investing activities</b>					
Capital expenditures.....			( 156)		( 156)
Proceeds from sale of business.....			7		7
Proceeds from sale of property, plant and equipment.....			66		66
Intercompany investing activities.....		24		(\$24)	
Other.....			( 11)		( 11)
<b>Net cash provided by/(used for) investing activities .....</b>		<b>24</b>	<b>( 94)</b>	<b>( 24)</b>	<b>( 94)</b>
<b>Cash flows from financing activities</b>					
Proceeds from long-term debt.....			48		48
Payments of long-term debt.....			( 55)		( 55)
Net change in revolving credit facility and short-term debt....			( 217)		( 217)
Net change in long-term intercompany balances.....	72	41	( 113)		
Dividends paid.....			( 24)	24	
Common stock issued.....	14				14
Common stock repurchased.....	( 118)				( 118)
Dividends paid to minority interests.....			( 38)		( 38)
Other.....			( 30)		( 30)
<b>Net cash provided by/(used for) financing activities .....</b>	<b>( 32)</b>	<b>41</b>	<b>( 429)</b>	<b>24</b>	<b>( 396)</b>
Effect of exchange rate changes on cash and cash equivalents.....			31		31
Net change in cash and cash equivalents.....			50		50
Cash and cash equivalents at January 1 .....			407		407
<b>Cash and cash equivalents at December 31 .....</b>	<b>\$ 0</b>	<b>\$ 0</b>	<b>\$457</b>	<b>\$ 0</b>	<b>\$457</b>

**Crown Holdings, Inc.**

**CONDENSED COMBINING STATEMENT OF CASH FLOWS**

For the year ended December 31, 2006  
(In millions)

	Parent	Issuer	Non Guarantors	Eliminations	Total Company
<b>Net cash provided by/(used for) operating activities</b> .....	<u>(\$ 3)</u>	<u>(\$44)</u>	<u>\$402</u>		<u>\$355</u>
<b>Cash flows from investing activities</b>					
Capital expenditures .....			( 191 )		( 191 )
Proceeds from sale of business .....			7		7
Proceeds from sale of property, plant and equipment.....			81		81
Intercompany investing activities .....		19		(\$19)	
Other .....			( 8 )		( 8 )
<b>Net cash provided by/(used for) Investing activities</b> .....		<u>19</u>	<u>( 111 )</u>	<u>( 19 )</u>	<u>( 111 )</u>
<b>Cash flows from financing activities</b>					
Proceeds from long-term debt .....			232		232
Payments of long-term debt .....			( 143 )		( 143 )
Net change in revolving credit facility and short-term debt...			( 81 )		( 81 )
Net change in long-term intercompany balances .....	120	25	( 145 )		
Debt issue costs .....			( 4 )		( 4 )
Dividends paid .....			( 19 )	19	
Common stock issued .....	18				18
Common stock repurchased .....	( 135 )				( 135 )
Dividends paid to minority interests .....			( 29 )		( 29 )
Other .....			( 16 )		( 16 )
<b>Net cash provided by/(used for) financing activities</b> .....	<u>3</u>	<u>25</u>	<u>( 205 )</u>	<u>19</u>	<u>( 158 )</u>
Effect of exchange rate changes on cash and cash equivalents .....			27		27
<b>Net change in cash and cash equivalents</b> .....			<u>113</u>		<u>113</u>
<b>Cash and cash equivalents at January 1</b> .....			<u>294</u>		<u>294</u>
<b>Cash and cash equivalents at December 31</b> .....	<u>\$ 0</u>	<u>\$ 0</u>	<u>\$407</u>	<u>\$ 0</u>	<u>\$407</u>

**Crown Holdings, Inc.**

**CONDENSED COMBINING STATEMENT OF CASH FLOWS**

**For the year ended December 31, 2005**  
(in millions)

	<u>Parent</u>	<u>Issuer</u>	<u>Non Guarantors</u>	<u>Eliminations</u>	<u>Total Company</u>
Net cash provided by/(used for) operating activities.....	\$ 3	(\$ 303)	\$ 178		(\$ 122)
<b>Cash flows from investing activities</b>					
Capital expenditures.....			( 192)		( 192)
Proceeds from sale of business .....			627		627
Proceeds from sale of property, plant and equipment.....			40		40
Intercompany investing activities.....		2,903		(\$2,903)	
Other.....			( 11)		( 11)
<b>Net cash provided by investing activities .....</b>		<b>2,903</b>	<b>464</b>	<b>( 2,903)</b>	<b>464</b>
<b>Cash flows from financing activities</b>					
Proceeds from long-term debt .....			1,616		1,616
Payments of long-term debt .....			( 2,268)		( 2,268)
Net change in short-term debt .....			248		248
Debt issue costs .....			( 26)		( 26)
Net change in long-term intercompany balances .....	19	( 2,600)	2,581		
Dividends paid .....			( 2,903)	2,903	
Common stock issued .....	16				16
Common stock repurchased.....	( 38)				( 38)
Dividends paid to minority interests.....			( 45)		( 45)
<b>Net cash used for financing activities .....</b>	<b>( 3)</b>	<b>( 2,600)</b>	<b>( 797)</b>	<b>2,903</b>	<b>( 497)</b>
Effect of exchange rate changes on cash and cash equivalents .....			( 22)		( 22)
<b>Net change in cash and cash equivalents .....</b>			<b>( 177)</b>		<b>( 177)</b>
Cash and cash equivalents at January 1 .....			471		471
<b>Cash and cash equivalents at December 31.....</b>	<b>\$ 0</b>	<b>\$ 0</b>	<b>\$ 294</b>	<b>\$ 0</b>	<b>\$ 294</b>

# **Crown Holdings, Inc.**

Crown Americas, LLC and Crown Americas Capital Corp., 100% owned subsidiaries of the Company, have outstanding senior unsecured notes that are fully and unconditionally guaranteed by substantially all subsidiaries in the United States. The guarantors are 100% owned by the Company and the guarantees are made on a joint and several basis. The following condensed combining financial statements:

- statements of operations and cash flows for the years ended December 31, 2007, 2006 and 2005, and
- balance sheets as of December 31, 2007 and 2006

are presented on the following pages to comply with the Company's requirements under Rule 3-10 of Regulation S-X.

## **CONDENSED COMBINING STATEMENT OF OPERATIONS**

**For the year ended December 31, 2007**  
(in millions)

	<u>Parent</u>	<u>Issuer</u>	<u>Guarantors</u>	<u>Non Guarantors</u>	<u>Eliminations</u>	<u>Total Company</u>
<b>Net sales</b> .....			\$2,098	\$5,629		\$7,727
Cost of products sold, excluding depreciation and amortization .....			1,767	4,704		6,471
Depreciation and amortization .....			60	169		229
<b>Gross profit</b> .....			271	756		1,027
Selling and administrative expense .....		\$ 7	131	247		385
Provision for asbestos .....			29			29
Provision for restructuring .....			3	17		20
Provision for asset impairments and loss/gain on sale of assets .....		5	5	90		100
Net interest expense .....		60	77	167		304
Technology royalty .....			( 39)	39		
Translation and exchange adjustments .....				( 12)		( 12)
<b>Income/(loss) before income taxes, minority interests and equity earnings .... and equity earnings</b> .....		( 72)	65	208		201
Provision/(benefit) for income taxes .....		( 27)	( 437)	64		( 400)
Equity earnings .....	\$528	116	26		(\$670)	
<b>Income before minority interests and equity earnings</b> .....	528	71	528	144	( 670)	601
Minority interests and equity earnings .....				( 73)		( 73)
<b>Net income</b> .....	<u>\$528</u>	<u>\$ 71</u>	<u>\$ 528</u>	<u>\$ 71</u>	<u>(\$670)</u>	<u>\$ 528</u>

**Crown Holdings, Inc.**

**CONDENSED COMBINING STATEMENT OF OPERATIONS**

**For the year ended December 31, 2006**  
**(in millions)**

	<u>Parent</u>	<u>Issuer</u>	<u>Guarantors</u>	<u>Non Guarantors</u>	<u>Eliminations</u>	<u>Total Company</u>
<b>Net sales</b> .....			\$1,907	\$5,075		\$6,982
Cost of products sold, excluding depreciation and amortization .....			1,613	4,250		5,863
Depreciation and amortization .....			64	163		227
<b>Gross profit</b> .....			230	662		892
Selling and administrative expense .....		\$ 8	101	207		316
Provision for asbestos .....			10			10
Provision for restructuring .....			4	11		15
Provision for asset impairments and loss/gain on sale of assets .....			( 8 )	( 56 )		( 64 )
Net interest expense .....		57	73	144		274
Technology royalty .....			( 36 )	36		
Translation and exchange adjustments .....			( 1 )	7		6
<b>Income/(loss) from continuing operations before income taxes, minority interests and equity earnings</b> .....		( 65 )	87	313		335
Provision/(benefit) for income taxes .....		( 23 )	( 109 )	70		( 62 )
Equity earnings .....	\$309	238	116		(\$663)	
<b>Income from continuing operations before minority interests and equity earnings</b> ....	309	196	312	243	( 663 )	397
Minority interests and equity earnings .....		( 3 )		( 52 )		( 55 )
<b>Income from continuing operations</b> .....	309	193	312	191	( 663 )	342
<b>Discontinued operations</b>						
Loss before income taxes .....		( 15 )	( 3 )	( 16 )		( 34 )
Benefit for income taxes .....				( 1 )		( 1 )
<b>Net Income</b> .....	<u>\$309</u>	<u>\$178</u>	<u>\$ 309</u>	<u>\$ 176</u>	<u>(\$663)</u>	<u>\$ 309</u>

**Crown Holdings, Inc.**

**CONDENSED COMBINING STATEMENT OF OPERATIONS**

**For the year ended December 31, 2005**  
**(in millions)**

	<u>Parent</u>	<u>Issuer</u>	<u>Guarantors</u>	<u>Non Guarantors</u>	<u>Eliminations</u>	<u>Total Company</u>
<b>Net sales</b> .....			\$1,933	\$4,742		\$6,675
Cost of products sold, excluding depreciation and amortization .....			1,653	3,874		5,527
Depreciation and amortization.....			73	164		237
<b>Gross profit</b> .....			207	704		911
Selling and administrative expense.....		\$ 8	109	222		339
Provision for asbestos .....			10			10
Provision for restructuring.....			3	10		13
Provision for asset impairments and loss/gain on sale of assets .....		( 5)	5	( 18)		( 18)
Loss/(gain) from early extinguishments of debt .....		558	( 505)	330		383
Net interest expense.....		21	116	215		352
Technology royalty.....			( 44)	44		
Translation and exchange adjustments.....				94		94
<b>Income/(loss) from continuing operations before income taxes, minority interests and equity earnings</b> .....		( 582)	513	( 193)		( 262)
Provision/(benefit) for income taxes .....			( 9)	20		11
Equity earnings/(loss).....	(\$354)	288	( 860)		\$926	
<b>Loss from continuing operations before minority interests and equity earnings</b> ..	( 354)	( 294)	( 338)	( 213)	926	( 273)
Minority interests and equity earnings.....		1	1	( 41)		( 39)
<b>Loss from continuing operations</b> .....	( 354)	( 293)	( 337)	( 254)	926	( 312)
<b>Discontinued operations</b>						
Income/(loss) before income taxes.....		94	( 10)	( 105)		( 21)
Provision for income taxes .....			7	14		21
<b>Net loss</b> .....	(\$354)	(\$199)	(\$ 354)	(\$ 373)	\$926	(\$ 354)

**Crown Holdings, Inc.**

**CONDENSED COMBINING BALANCE SHEET**

**As of December 31, 2007**  
(in millions)

	<u>Parent</u>	<u>Issuer</u>	<u>Guarantors</u>	<u>Non Guarantors</u>	<u>Eliminations</u>	<u>Total Company</u>
<b>Assets</b>						
<b>Current assets</b>						
Cash and cash equivalents .....		\$ 42	\$ 5	\$ 410		\$ 457
Receivables, net .....			10	663		673
Intercompany receivables .....			70	12	(\$ 82)	
Inventories .....			239	791		1,030
Prepaid expenses and other current assets .....	\$ 2	1	4	67		74
<b>Total current assets</b> .....	<u>2</u>	<u>43</u>	<u>328</u>	<u>1,943</u>	<u>( 82)</u>	<u>2,234</u>
Intercompany debt receivables .....		1,073	623	53	( 1,749)	
Investments .....	225	780	48		( 1,053)	
Goodwill .....			453	1,746		2,199
Property, plant and equipment, net .....		2	331	1,271		1,604
Other non-current assets .....		43	580	319		942
<b>Total</b> .....	<u>\$227</u>	<u>\$1,941</u>	<u>\$2,363</u>	<u>\$5,332</u>	<u>(\$2,884)</u>	<u>\$6,979</u>
<b>Liabilities and shareholders' equity</b>						
<b>Current liabilities</b>						
Short-term debt .....				\$ 45		\$ 45
Current maturities of long-term debt .....		\$ 4	\$ 1	33		38
Accounts payable and accrued liabilities .....	\$ 23	21	337	1,619		2,000
Intercompany payables .....			12	70	(\$ 82)	
<b>Total current liabilities</b> .....	<u>23</u>	<u>25</u>	<u>350</u>	<u>1,767</u>	<u>( 82)</u>	<u>2,083</u>
Long-term debt, excluding current maturities .....		1,454	701	1,199		3,354
Long-term intercompany debt .....	189	416	396	748	( 1,749)	
Postretirement and pension liabilities .....			429	196		625
Other non-current liabilities .....			262	317		579
Minority interests .....				323		323
Commitments and contingent liabilities .....						
Shareholders' equity .....	15	46	225	782	( 1,053)	15
<b>Total</b> .....	<u>\$227</u>	<u>\$1,941</u>	<u>\$2,363</u>	<u>\$5,332</u>	<u>(\$2,884)</u>	<u>\$6,979</u>

Crown Holdings, Inc.

**CONDENSED COMBINING BALANCE SHEET**

As of December 31, 2006  
(in millions)

	Parent	Issuer	Guarantors	Non Guarantors	Eliminations	Total Company
<b>Assets</b>						
<b>Current assets</b>						
Cash and cash equivalents .....		\$ 60	\$ 4	\$ 343		\$ 407
Receivables, net .....			8	681		689
Intercompany receivables .....			72	8	(\$ 80)	
Inventories .....			223	734		957
Prepaid expenses and other current assets .....	\$ 1	2	3	54		60
<b>Total current assets</b> .....	<u>1</u>	<u>62</u>	<u>310</u>	<u>1,820</u>	<u>( 80)</u>	<u>2,113</u>
Intercompany debt receivables .....		1,090	528	34	( 1,652)	
Investments .....	( 374)	324	169		( 119)	
Goodwill .....			445	1,740		2,185
Property, plant and equipment, net .....		3	360	1,245		1,608
Other non-current assets .....		38	63	402		503
<b>Total</b> .....	<u>(\$373)</u>	<u>\$1,517</u>	<u>\$1,875</u>	<u>\$5,241</u>	<u>(\$1,851)</u>	<u>\$6,409</u>
<b>Liabilities and shareholders' equity/(deficit)</b>						
<b>Current liabilities</b>						
Short-term debt .....				\$ 78		\$ 78
Current maturities of long-term debt .....			\$ 5	38		43
Accounts payable and accrued liabilities .....	\$ 4		365	1,466		1,835
Intercompany payables .....		\$ 16		64	(\$ 80)	
<b>Total current liabilities</b> .....	<u>4</u>	<u>16</u>	<u>370</u>	<u>1,646</u>	<u>( 80)</u>	<u>1,956</u>
Long-term debt, excluding current maturities .....		1,522	697	1,201		3,420
Long-term intercompany debt .....	117	352	396	787	( 1,652)	
Postretirement and pension liabilities .....			553	196		749
Other non-current liabilities .....			233	266		499
Minority interests .....				279		279
Commitments and contingent liabilities .....						
Shareholders' equity/(deficit) .....	( 494)	( 373)	( 374)	866	( 119)	( 494)
<b>Total</b> .....	<u>(\$373)</u>	<u>\$1,517</u>	<u>\$1,875</u>	<u>\$5,241</u>	<u>(\$1,851)</u>	<u>\$6,409</u>



**Crown Holdings, Inc.**

**CONDENSED COMBINING STATEMENT OF CASH FLOWS**

For the year ended December 31, 2007  
(in millions)

	<u>Parent</u>	<u>Issuer</u>	<u>Guarantors</u>	<u>Non Guarantors</u>	<u>Eliminations</u>	<u>Total Company</u>
Net cash provided by/(used for) operating activities....	\$ 32	(\$47)	\$109	\$415		\$509
<b>Cash flows from investing activities</b>						
Capital expenditures.....			( 31)	( 125)		( 156)
Proceeds from sale of business .....		7				7
Proceeds from sale of property, plant and equipment ....			1	65		66
Intercompany investing activities .....		14	18		(\$32)	
Other.....				( 11)		( 11)
<b>Net cash provided by/(used for) investing activities .....</b>		21	( 12)	( 71)	( 32)	( 94)
<b>Cash flows from financing activities</b>						
Proceeds from long-term debt.....				48		48
Payments of long-term debt .....		( 4)	( 1)	( 50)		( 55)
Net change in revolving credit facility and short-term debt .....		( 60)		( 157)		( 217)
Net change in long-term intercompany balances.....	72	72	( 95)	( 49)		
Dividends paid.....				( 32)	32	
Common stock issued .....	14					14
Common stock repurchased .....	( 118)					( 118)
Dividends paid to minority interests .....				( 38)		( 38)
Other .....				( 30)		( 30)
<b>Net cash provided by/(used for) financing activities .....</b>	( 32)	8	( 96)	( 308)	32	( 396)
Effect of exchange rate changes on cash and cash equivalents .....				31		31
Net change in cash and cash equivalents.....		( 18)	1	67		50
Cash and cash equivalents at January 1 .....		60	4	343		407
Cash and cash equivalents at December 31.....	\$ 0	\$42	\$ 5	\$410	\$ 0	\$457

**Crown Holdings, Inc.**

**CONDENSED COMBINING STATEMENT OF CASH FLOWS**

**For the year ended December 31, 2006**  
(in millions)

	<u>Parent</u>	<u>Issuer</u>	<u>Guarantors</u>	<u>Non</u> <u>Guarantors</u>	<u>Eliminations</u>	<u>Total</u> <u>Company</u>
	<u>(\$ 3)</u>	<u>(\$ 40)</u>	<u>\$ 96</u>	<u>\$302</u>		<u>\$355</u>
<b>Net cash provided by/(used for) operating activities ...</b>						
<b>Cash flows from investing activities</b>						
Capital expenditures.....		( 1)	( 36)	( 154)		( 191)
Proceeds from sale of business.....		4		3		7
Proceeds from sale of property, plant and equipment....			31	50		81
Intercompany investing activities.....		11	22		(\$33)	
Other.....				(8)		( 8)
<b>Net cash provided by/(used for)</b>						
<b>investing activities .....</b>		14	17	( 109)	( 33)	( 111)
<b>Cash flows from financing activities</b>						
Proceeds from long-term debt.....		200		32		232
Payments of long-term debt.....		( 3)		( 140)		( 143)
Net change in revolving credit facility and short-term debt.....		( 151)		70		( 81)
Net change in long-term intercompany balances.....	120	26	( 110)	( 36)		
Debt issue costs.....		( 4)				( 4)
Dividends paid.....				( 33)	33	
Common stock issued.....	18					18
Common stock repurchased.....	( 135)					( 135)
Dividends paid to minority interests .....				( 29)		( 29)
Other.....				( 16)		( 16)
<b>Net cash provided by/(used for)</b>						
<b>financing activities .....</b>	3	68	( 110)	( 152)	33	( 158)
Effect of exchange rate changes on cash and cash equivalents .....				27		27
<b>Net change in cash and cash equivalents.....</b>		42	3	68		113
<b>Cash and cash equivalents at January 1 .....</b>		18	1	275		294
<b>Cash and cash equivalents at December 31.....</b>	<u>\$ 0</u>	<u>\$ 60</u>	<u>\$ 4</u>	<u>\$343</u>	<u>\$ 0</u>	<u>\$407</u>

**Crown Holdings, Inc.**

**CONDENSED COMBINING STATEMENT OF CASH FLOWS**

For the year ended December 31, 2005  
(in millions)

	<u>Parent</u>	<u>Issuer</u>	<u>Guarantors</u>	<u>Non Guarantors</u>	<u>Eliminations</u>	<u>Total Company</u>
Net cash provided by/(used for) operating activities ...	<u>\$ 3</u>	<u>(\$ 31)</u>	<u>(\$ 188)</u>	<u>\$ 94</u>		<u>(\$ 122)</u>
<b>Cash flows from investing activities</b>						
Capital expenditures.....			( 26)	( 166)		( 192)
Proceeds from sale of business.....		156	96	375		627
Proceeds from sale of property, plant and equipment ....		4	17	19		40
Intercompany investing activities .....		18	2,899		(\$2,917)	
Other.....			( 5)	( 6)		( 11)
<b>Net cash provided by investing activities .....</b>		<u>178</u>	<u>2,981</u>	<u>222</u>	<u>( 2,917)</u>	<u>464</u>
<b>Cash flows from financing activities</b>						
Proceeds from long-term debt.....		1,265		351		1,616
Payments of long-term debt .....			( 1)	( 2,267)		( 2,268)
Net change in short-term debt.....		210		38		248
Net change in long-term intercompany balances.....	19	1,310	( 2,828)	1,499		
Debt issue costs .....		( 26)				( 26)
Dividends paid.....		( 2,897)		( 20)	2,917	
Common stock issued.....	16					16
Common stock repurchased .....	( 38)					( 38)
Dividends paid to minority interests .....				( 45)		( 45)
<b>Net cash used for financing activities .....</b>	<u>( 3)</u>	<u>( 138)</u>	<u>( 2,829)</u>	<u>( 444)</u>	<u>2,917</u>	<u>( 497)</u>
Effect of exchange rate changes on cash and cash equivalents .....				( 22)		( 22)
Net change in cash and cash equivalents.....		9	( 36)	( 150)		( 177)
Cash and cash equivalents at January 1 .....		9	37	425		471
<b>Cash and cash equivalents at December 31.....</b>	<u>\$ 0</u>	<u>\$ 18</u>	<u>\$ 1</u>	<u>\$ 275</u>	<u>\$ 0</u>	<u>\$ 294</u>

# Crown Holdings, Inc.

## Quarterly Data (unaudited)

(in millions)	2007				2006			
	First	Second <sup>(1)</sup>	Third <sup>(2)</sup>	Fourth <sup>(3)</sup>	First <sup>(4)</sup>	Second <sup>(5)</sup>	Third <sup>(6)</sup>	Fourth <sup>(7)</sup>
Net sales.....	\$1,713	\$1,990	\$2,153	\$1,871	\$1,524	\$1,781	\$2,001	\$1,676
Gross profit*.....	215	286	312	214	188	245	260	199
Income – continuing operations.....	18	91	93	326	14	74	86	168
Loss – discontinued operations.....					( 2)	( 24)	( 1)	( 6)
Net income.....	18	91	93	326	12	50	85	162
Earnings/(loss) per average common share:								
Basic								
- continuing operations.....	\$0.11	\$0.56	\$0.58	\$2.05	\$ 0.08	\$ 0.44	\$ 0.52	\$ 1.04
- discontinued operations...					( 0.01)	( 0.14)	( 0.01)	( 0.04)
Net income.....	\$0.11	\$0.56	\$0.58	\$2.05	\$ 0.07	\$ 0.30	\$ 0.51	\$ 1.00
Diluted								
- continuing operations.....	\$0.11	\$0.54	\$0.56	\$2.00	\$ 0.08	\$ 0.43	\$ 0.51	\$ 1.01
- discontinued operations...					( 0.01)	( 0.14)	( 0.01)	( 0.04)
Net income.....	\$0.11	\$0.54	\$0.56	\$2.00	\$ 0.07	\$ 0.29	\$ 0.50	\$ 0.97
Average common shares outstanding:								
Basic.....	162.3	162.9	161.2	158.9	167.1	167.1	165.7	162.3
Diluted.....	166.7	167.2	165.2	162.7	171.6	170.9	169.8	166.7
Common stock price range: **								
High.....	\$25.42	\$25.98	\$27.43	\$27.13	\$20.11	\$18.17	\$18.89	\$21.78
Low.....	20.83	23.76	21.31	22.06	17.14	14.72	14.71	18.22
Close.....	24.46	24.97	22.76	25.65	17.74	15.57	18.60	20.92

\* The Company defines gross profit as net sales less cost of products sold and depreciation and amortization.

\*\* Source: New York Stock Exchange – Composite Transactions

### Notes:

Amounts for 2007 and 2006 have been retrospectively adjusted for the Company's change in accounting for U.S. inventories from LIFO to FIFO, as discussed in Note G to the consolidated financial statements. Gross profit and net income, as adjusted, increased by \$2, \$3 and \$1 in the first, second and third quarters of 2007, respectively. Gross profit and net income, as adjusted, increased by \$2 in the first quarter of 2006 and decreased by \$2 in the fourth quarter of 2006.

Amounts for 2006 have been retrospectively adjusted for the adoption on January 1, 2007 of FSP AUG AIR-1, as discussed in Note A to the consolidated financial statements. Gross profit and net income, as adjusted, increased by \$3 in the first quarter of 2006 and decreased by \$3 in the fourth quarter of 2006.

- (1) Includes pre-tax charges of \$5 for restructuring actions and net pre-tax gains of \$10 for asset sales.
- (2) Includes pre-tax charges of \$9 for restructuring actions and net pre-tax gains of \$4 for asset sales.
- (3) Includes a tax benefit of \$462 from the reversal of U.S. valuation allowances, net pre-tax charges of \$114 for asset sales and impairments, and a pre-tax charge of \$29 for asbestos.
- (4) Includes pre-tax charges of \$9 for restructuring actions and net pre-tax gains of \$1 for asset sales.
- (5) Includes pre-tax charges of \$5 for restructuring actions.
- (6) Includes net pre-tax gains of \$1 for asset sales.
- (7) Includes a pre-tax charge of \$10 for asbestos, net pre-tax gains of \$62 for asset sales and impairments, a tax credit of \$121 related to the reversal of a minimum pension liability adjustment, and pre-tax charges of \$1 for restructuring actions.

**Crown Holdings, Inc.**

**SCHEDULE II – VALUATION AND QUALIFYING ACCOUNTS AND RESERVES**

(In millions)

<u>COLUMN A</u>	<u>COLUMN B</u>	<u>COLUMN C</u> Additions		<u>COLUMN D</u>	<u>COLUMN E</u>
Description	Balance at beginning of period	Charged to costs and expense	Charged to other accounts	Deductions – Write-offs	Balance at end of period

For the Year Ended December 31, 2007

Allowances deducted from assets to which they apply:

Trade accounts receivable	\$ 38	\$ 3	\$ 2	\$15	\$ 28
Deferred tax assets	925	( 485)	68		508

For the Year Ended December 31, 2006

Allowances deducted from assets to which they apply:

Trade accounts receivable	33	3	3	1	38
Deferred tax assets	951	3		29	925

For the Year Ended December 31, 2005

Allowances deducted from assets to which they apply:

Trade accounts receivable	42			9	33
Deferred tax assets	881	62	8		951

**ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE**

None.

**ITEM 9A. CONTROLS AND PROCEDURES**

As of the end of the period covered by this Annual Report on Form 10-K, management, including the Company's Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of the design and operation of its disclosure controls and procedures. Based upon that evaluation and as of the end of the quarter for which this report is made, the Company's Chief Executive Officer and Chief Financial Officer concluded that the disclosure controls and procedures were effective to ensure that information to be disclosed in reports that the Company files and submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the rules and terms of the Securities and Exchange Commission, and to ensure that information required to be disclosed in the reports that the Company files or submits under the Exchange Act is accumulated and communicated to the Company's management, including its Chief Executive Officer and Chief Financial Officer, to allow timely decisions regarding required disclosure.

The Company's report on internal control over financial reporting is included in Item 8 of this Report on Form 10-K.

## **Crown Holdings, Inc.**

There has been no change in internal controls over financial reporting that occurred during the quarter ended December 31, 2007 that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

### **ITEM 9B. OTHER INFORMATION**

None.

## **PART III**

### **ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE**

The information required by this Item is set forth in the Company's Proxy Statement within the sections entitled "Election of Directors," "Section 16(a) Beneficial Ownership Reporting Compliance" and "Corporate Governance" and is incorporated herein by reference.

The following table sets forth certain information concerning the principal executive officers of the Company, including their ages and positions.

<u>Name</u>	<u>Age</u>	<u>Title</u>	<u>Year Assumed Present Title</u>
John W. Conway	62	Chairman of the Board, President and Chief Executive Officer	2001
Alan W. Rutherford	64	Vice Chairman of the Board, Executive Vice President and Chief Financial Officer	2001
Frank J. Mechura	65	President – Americas Division	2001
Raymond L. McGowan, Jr.*	56	President – Americas Division	2008
Christopher C. Homfray	50	President – European Division	2006
Jozef Salaerts **	53	President – Asia-Pacific Division	2007
Timothy J. Donahue	45	Senior Vice President – Finance	2000
Thomas A. Kelly	48	Vice President and Corporate Controller	2000

\* As previously disclosed, Mr. Mechura will retire from the Company on February 29, 2008. Effective January 1, 2008, Mr. McGowan replaced Mr. Mechura as President of the Americas Division.

\*\* As previously disclosed, Mr. Salaerts was appointed President of the Asia-Pacific Division, effective May 1, 2007. Mr. Salaerts replaced William Voss who resigned from his position as President of the Asia-Pacific Division in December 2006 and who retired as of July 31, 2007.

All of the principal executive officers have been employed by the Company for the past five years.

### **ITEM 11. EXECUTIVE COMPENSATION**

The information required by this Item is set forth in the Company's Proxy Statement within the sections entitled "Executive Compensation," "Compensation Discussion and Analysis" and "Corporate Governance" and is incorporated herein by reference.

**Crown Holdings, Inc.**

**ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS**

The information required by this Item is set forth in the Company's Proxy Statement within the sections entitled "Proxy Statement – Meeting, April 24, 2008" and "Common Stock Ownership of Certain Beneficial Owners, Directors and Executive Officers" and is incorporated herein by reference.

**ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE**

The information required by this Item is set forth in the Company's Proxy Statement within the sections entitled "Election of Directors," "Corporate Governance" and "Executive Compensation" and is incorporated herein by reference.

**ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES**

The information required by this Item is set forth in the Company's Proxy Statement within the section entitled "Principal Accountant Fees and Services" and is incorporated herein by reference.

**PART IV**

**ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES**

a) The following documents are filed as part of this report:

(1) All Financial Statements:

Crown Holdings, Inc. and Subsidiaries (see Part II, Item 8, pages 37 through 99 of this Report).

Management's Report on Internal Control Over Financial Reporting

Report of Independent Registered Public Accounting Firm

Consolidated Statements of Operations for the years ended December 31, 2007, 2006 and 2005

Consolidated Balance Sheets as of December 31, 2007 and 2006

Consolidated Statements of Cash Flows for the years ended December 31, 2007, 2006 and 2005

Consolidated Statements of Shareholders' Equity/(Deficit) and Comprehensive Income/(Loss)  
for the years ended December 31, 2007, 2006 and 2005

Notes to Consolidated Financial Statements

Supplementary Information

(2) Financial Statement Schedules:

Schedule II – Valuation and Qualifying Accounts and Reserves (see page 100 of this Report).

All other schedules have been omitted because they are not applicable or the required information is included in the Consolidated Financial Statements.

(3) Exhibits

3.a Articles of Incorporation of Crown Holdings, Inc., as amended (incorporated by reference to Exhibit 3.a of the Registrant's Annual Report on Form 10-K for the year ended December 31, 2004 (File No. 0-50189)).

3.b By-Laws of Crown Holdings, Inc., as amended (incorporated by reference to Exhibit 3.b of the Registrant's Annual Report on Form 10-K for the year ended December 31, 2004 (File No. 0-50189)).

**Crown Holdings, Inc.**

- 4.a Specimen certificate of Registrant's Common Stock (incorporated by reference to Exhibit 4.a of the Registrant's Annual Report on Form 10-K for the year ended December 31, 1995 (File No. 1-2227)).
- 4.b Form of the Registrant's 8% Debentures Due 2023 (incorporated by reference to Exhibit 24 of the Registrant's Current Report on Form 8-K dated April 12, 1993 (File No. 1-2227)).
- 4.c Officers' Certificate (incorporated by reference to Exhibit 4.3 of the Registrant's Quarterly Report on Form 10-Q for the quarter ended March 31, 1993 (File No. 1-2227)).
- 4.d Indenture dated as of April 1, 1993 between Crown Cork & Seal Company, Inc. and Chemical Bank, as Trustee (incorporated by reference to Exhibit 26 of the Registrant's Current Report on Form 8-K dated April 12, 1993 (File No. 1-2227)).
- 4.e Terms Agreement dated March 31, 1993 (incorporated by reference to Exhibit 27 of the Registrant's Current Report on Form 8-K dated April 12, 1993 (File No. 1-2227)).
- 4.f Indenture, dated December 17, 1996, among Crown Cork & Seal Company, Inc., Crown Cork & Seal Finance PLC, Crown Cork & Seal Finance S.A. and the Bank of New York, as trustee (incorporated by reference to Exhibit 4.1 of the Registrant's Current Report on Form 8-K dated December 17, 1996 (File No. 1-2227)).
- 4.g Form of the Registrant's 7-3/8% Debentures Due 2026 (incorporated by reference to Exhibit 99.1 of the Registrant's Current Report on Form 8-K dated December 17, 1996 (File No. 1-2227)).
- 4.h Officers' Certificate for 7-3/8% Debentures Due 2026 (incorporated by reference to Exhibit 99.6 of the Registrant's Current Report on Form 8-K dated December 17, 1996 (File No. 1-2227)).
- 4.i Form of the Registrant's 7-1/2% Debentures Due 2096 (incorporated by reference to Exhibit 99.2 of the Registrant's Current Report on Form 8-K dated December 17, 1996 (File No. 1-2227)).
- 4.j Officers' Certificate for 7-1/2% Debentures Due 2096 (incorporated by reference to Exhibit 99.7 of the Registrant's Current Report on Form 8-K dated December 17, 1996 (File No. 1-2227)).
- 4.k Terms Agreement dated December 12, 1996 (incorporated by reference to Exhibit 1.1 of the Registrant's Current Report on Form 8-K dated December 17, 1996 (File No. 1-2227)).
- 4.l Form of Bearer Security Depositary Agreement (incorporated by reference to Exhibit 4.2 of the Registrant's Registration Statement on Form S-3, dated November 26, 1996, amended December 5 and 10, 1996 (File No. 333-16869)).
- 4.m Form of Underwriting Agreement (incorporated by reference to Exhibit 1.1 of the Registrant's Registration Statement on Form S-3, dated November 26, 1996, amended December 5 and 10, 1996 (File No. 333-16869)).
- 4.n Amended and Restated Rights Agreement, dated as of December 9, 2004, between Crown Holdings, Inc. and Wells Fargo Bank, N.A., as Rights Agent (incorporated by reference to Exhibit 4.1 of the Registrant's Current Report on Form 8-K dated December 9, 2004 (File No. 0-50189)).
- 4.o Supplemental Indenture to Indenture dated April 1, 1993, dated as of February 25, 2003, between Crown Cork & Seal Company, Inc., as Issuer, Crown Holdings, Inc., as Guarantor and Bank One Trust Company, N.A., as Trustee (incorporated by reference to Exhibit 4.3 of the Registrant's Current Report on Form 8-K dated February 26, 2003 (File No. 0-50189)).
- 4.p Supplemental Indenture to Indenture dated December 17, 1996, dated as of February 25, 2003, between Crown Cork & Seal Company, Inc., as Issuer and Guarantor, Crown Cork & Seal Finance PLC, as Issuer, Crown Cork & Seal Finance S.A., as Issuer, Crown Holdings, Inc., as Additional Guarantor and Bank One Trust Company, N.A., as Trustee (incorporated by reference to Exhibit 4.5 of the Registrant's Current Report on Form 8-K dated February 26, 2003 (File No. 0-50189)).



**Crown Holdings, Inc.**

- 4.q U.S. Guarantee Agreement, dated as of September 1, 2004, among the Domestic Subsidiaries referred to therein and Citicorp North America Inc., as Administrative Agent (incorporated by reference to Exhibit 4.g of the Registrant's Current Report on Form 8-K dated September 1, 2004 (File No. 0-50189)).
- 4.r Non-U.S. Guarantee Agreement, dated as of February 26, 2003 among the Guarantors referred to therein and Citicorp International plc, as U.K. Administrative Agent (incorporated by reference to Exhibit 4.kk of the Registrant's Annual Report on Form 10-K for the year ended December 31, 2002 (File No. 0-50189)).
- 4.s Registration Rights Agreement relating to the 9.5% Second Priority Senior Secured Notes due 2011 and the 10.25% Second Priority Senior Secured Notes due 2011, dated as of February 26, 2003 among Crown European Holdings, Crown Holdings, Inc. and the other Guarantors named therein and the several purchasers named in Schedule I thereto (incorporated by reference to Exhibit 4.mm of the Registrant's Annual Report on Form 10-K for the year ended December 31, 2002 (File No. 0-50189)).
- 4.t Registration Rights Agreement, dated as of September 1, 2004, by and among the Company, Crown European Holdings S.A., Citigroup Global Markets Inc. and Lehman Brothers Inc., as Representatives, the Initial Purchasers (as defined therein) and the Guarantors (as defined therein) (incorporated by reference to Exhibit 4.i of the Registrant's Current Report on Form 8-K dated September 1, 2004 (File No. 0-50189)).
- 4.u Indenture dated as of September 1, 2004, by and among Crown European Holdings, as Issuer, the Guarantors named therein and Wells Fargo Bank, as Trustee, relating to the 6.25% First Priority Senior Secured Notes due 2011 (incorporated by reference to Exhibit 4.j of the Registrant's Current Report on Form 8-K dated September 1, 2004 (File No. 0-50189)).
- 4.v Form of Crown European Holdings' 9.5% Second Priority Senior Secured Notes due 2011 (incorporated by reference to Exhibit 4.jj of the Registrant's Annual Report on Form 10-K for the year ended December 31, 2003 (File No. 0-50189)).
- 4.w Indenture dated as of February 26, 2003, by and among Crown European Holdings, the guarantors named therein and Wells Fargo Bank Minnesota, N.A., as Trustee, governing Crown European Holdings' 9.5% Second Priority Senior Secured Notes due 2011 and 10.25% Second Priority Senior Secured Notes due 2011 (incorporated by reference to Exhibit 4.oo of the Registrant's Annual Report on Form 10-K for the year ended December 31, 2002 (File No. 0-50189)).
- 4.x Form of Crown European Holdings' 10.25% Second Priority Senior Secured Notes due 2011 (incorporated by reference to Exhibit 4.kk of the Registrant's Annual Report on Form 10-K for the year ended December 31, 2003 (File No. 0-50189)).
- 4.y Indenture dated as of February 26, 2003, by and among Crown European Holdings, the guarantors named therein and Wells Fargo Bank, N.A., as trustee, governing Crown European Holdings' 10.875% Third Priority Senior Secured Notes due 2013 (incorporated by reference to Exhibit 4.rr of the Registrant's Annual Report on Form 10-K for the year ended December 31, 2002 (File No. 0-50189)).
- 4.z Form of Crown European Holdings' 10.875% Third Priority Senior Secured Notes due 2013 (incorporated by reference to Exhibit 4.mm of the Registrant's Annual Report on Form 10-K for the year ended December 31, 2003 (File No. 0-50189)).
- 4.aa Form of Crown European Holdings' 6.25% First Priority Senior Secured Notes due 2011 (incorporated by reference to Exhibit 4.a of the Registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 2004 (File No. 0-50189)).

**Crown Holdings, Inc.**

- 4.bb Registration Rights Agreement relating to the 10.875% Third Priority Senior Secured Notes due 2013, dated as of February 26, 2003 among Crown European Holdings, Crown Holdings, Inc. and the other Guarantors named therein and the several purchasers named in Schedule I thereto (incorporated by reference to Exhibit 4.nn of the Registrant's Annual Report on Form 10-K for the year ended December 31, 2002 (File No. 0-50189)).
- 4.cc Registration Rights Agreement relating to the 6.25% First Priority Senior Secured Notes due 2011, dated as of October 6, 2004, by and among the Company, Crown European Holdings, S.A., Citigroup Global Markets Inc. and Lehman Brothers Inc., as Representatives, the Initial Purchasers (as defined therein) and the Guarantors (as defined therein) (incorporated by reference to Exhibit 4.a of the Registrant's Current Report on Form 8-K dated October 6, 2004 (File No. 0-50189)).
- 4.dd Credit Agreement, dated as of November 18, 2005, among Crown Americas LLC, as U.S. Borrower, Crown European Holdings, S.A., as European Borrower, CROWN Metal Packaging Canada LP, as Canadian Borrower, the Subsidiary Borrowers named therein, the Company, Crown International Holdings, Inc. and Crown Cork & Seal Company, Inc., as Parent Guarantors, Deutsche Bank AG New York Branch, as Administrative Agent and U.K. Administrative Agent, The Bank of Nova Scotia, as Canadian Administrative Agent, and various Lending Institutions (incorporated by reference to Exhibit 4.a of the Registrant's Current Report on Form 8-K dated November 18, 2005 (File No. 0-50189)).
- 4.ee Euro Bank Pledge Agreement, dated as of November 18, 2005, by Crown Cork & Seal Company, Inc., Crown Americas LLC, Crown International Holdings, Inc., the U.S. Subsidiaries party thereto, as Pledgors and Deutsche Bank AG New York Branch, as Euro Collateral Agent (incorporated by reference to Exhibit 4.b of the Registrant's Current Report on Form 8-K dated November 18, 2005 (File No. 0-50189)).
- 4.ff Second Amended and Restated CEH Pledge Agreement, dated as of November 18, 2005, by Crown European Holdings S.A., as Pledgor and Deutsche Bank AG New York Branch, as Euro Collateral Agent (incorporated by reference to Exhibit 4.c of the Registrant's Current Report on Form 8-K dated November 18, 2005 (File No. 0-50189)).
- 4.gg Second Amended and Restated Shared Pledge Agreement, dated as of November 18, 2005, by the Company, Crown Cork & Seal Company, Inc., Crown Americas LLC, Crown International Holdings, Inc., the U.S. Subsidiaries party thereto, as Pledgors and Deutsche Bank AG New York Branch, as Collateral Agent (incorporated by reference to Exhibit 4.d of the Registrant's Current Report on Form 8-K dated November 18, 2005 (File No. 0-50189)).
- 4.hh Bank Pledge Agreement, dated as of November 18, 2005, by the Company, Crown Cork & Seal Company, Inc., Crown Americas LLC, Crown International Holdings, Inc., the U.S. Subsidiaries party thereto, as Pledgors and Deutsche Bank AG New York Branch, as Collateral Agent (incorporated by reference to Exhibit 4.e of the Registrant's Current Report on Form 8-K dated November 18, 2005 (File No. 0-50189)).
- 4.ii Second Amended and Restated U.S. Security Agreement, dated as of November 18, 2005, by the Company, Crown Cork & Seal Company, Inc., Crown Americas LLC, Crown International Holdings, Inc., the U.S. Subsidiaries party thereto, as Grantors and Deutsche Bank AG New York Branch (incorporated by reference to Exhibit 4.f of the Registrant's Current Report on Form 8-K dated November 18, 2005 (File No. 0-50189)).
- 4.jj U.S. Guarantee Agreement, dated as of November 18, 2005, among each of the subsidiaries listed therein of Crown Americas LLC and Deutsche Bank AG New York Branch, as Administrative Agent (incorporated by reference to Exhibit 4.g of the Registrant's Current Report on Form 8-K dated November 18, 2005 (File No. 0-50189)).

Crown Holdings, Inc.

- 4.kk Second Amended and Restated Global Participation and Proceeds Sharing Agreement, dated as of November 18, 2005, among Deutsche Bank AG New York Branch, as Administrative Agent, Deutsche Bank AG New York Branch, as U.K. Agent, The Bank of Nova Scotia, as Canadian Administrative Agent, Wells Fargo Bank, N.A., as Second Priority Notes Trustee, Wells Fargo Bank, N.A., as Third Priority Notes Trustee, Wells Fargo Bank, N.A., as First Priority Notes Trustee, Deutsche Bank AG New York Branch, as U.S. Collateral Agent, Deutsche Bank AG New York Branch, as Euro Collateral Agent, Deutsche Bank AG New York Branch, as Sharing Agent (as defined therein) and the other persons who may become party to the Agreement from time to time pursuant to and in accordance with Section 9 of the Agreement (incorporated by reference to Exhibit 4.h of the Registrant's Current Report on Form 8-K dated November 18, 2005 (File No. 0-50189)).
- 4.ll Registration Rights Agreement, dated as of November 18, 2005, by and among the Company, Crown Americas LLC and Crown Americas Capital Corp., Citigroup Global Markets Inc., Lehman Brothers Inc., Deutsche Bank Securities Inc., Banc of Americas Securities LLC, as Representatives of the several Initial Purchasers named therein and the Guarantors (as defined therein), relating to the \$500 million 7 5/8% Senior Notes due 2013 (incorporated by reference to Exhibit 4.i of the Registrant's Current Report on Form 8-K dated November 18, 2005 (File No. 0-50189)).
- 4.mm Registration Rights Agreement, dated as of November 18, 2005, by and among the Company, Crown Americas LLC and Crown Americas Capital Corp., Citigroup Global Markets Inc., Lehman Brothers Inc., Deutsche Bank Securities Inc., Banc of Americas Securities LLC, as Representatives of the several Initial Purchasers named therein and the Guarantors (as defined therein), relating to the \$600 million 7 3/4% Senior Notes due 2015 (incorporated by reference to Exhibit 4.j of the Registrant's Current Report on Form 8-K dated November 18, 2005 (File No. 0-50189)).
- 4.nn Indenture, dated as of November 18, 2005, by and among Crown Americas LLC and Crown Americas Capital Corp., as Issuers, the Guarantors named therein and Citibank, N.A., as Trustee, relating to the 7 5/8% Senior Notes due 2013 (incorporated by reference to Exhibit 4.k of the Registrant's Current Report on Form 8-K dated November 18, 2005 (File No. 0-50189)).
- 4.oo Indenture, dated as of November 18, 2005, by and among Crown Americas LLC and Crown Americas Capital Corp., as Issuers, the Guarantors named therein and Citibank, N.A., as Trustee, relating to the 7 3/4% Senior Notes due 2015 (incorporated by reference to Exhibit 4.l of the Registrant's Current Report on Form 8-K dated November 18, 2005 (File No. 0-50189)).
- 4.pp Form of 7 5/8% Senior Notes due 2013 (incorporated by reference to Exhibit 4.m of the Registrant's Current Report on Form 8-K dated November 18, 2005 (File No. 0-50189)).
- 4.qq Form of 7 3/4% Senior Notes due 2015 (incorporated by reference to Exhibit 4.n of the Registrant's Current Report on Form 8-K dated November 18, 2005 (File No. 0-50189)).
- 4.rr Second Amended and Restated U.S. Intercreditor and Collateral Agency Agreement, dated as of November 18, 2005, among Deutsche Bank AG New York Branch, as Administrative Agent, Deutsche Bank AG New York Branch, as U.K. Agent, The Bank of Nova Scotia, as Canadian Administrative Agent, Wells Fargo Bank, N.A., as First Priority Notes Trustee, Deutsche Bank AG New York Branch, as U.S. Collateral Agent (as defined within), the Company, Crown Americas LLC, Crown Cork & Seal Company, Inc., Crown International Holdings, Inc., each of the U.S. subsidiaries of the Company listed therein, and the other persons who may become parties to the Agreement from time to time pursuant to and in accordance with Section 8 of the Agreement (incorporated by reference to Exhibit 4.o of the Registrant's Current Report on Form 8-K dated November 18, 2005 (File No. 0-50189)).

**Crown Holdings, Inc.**

- 4.ss Second Amended and Restated Euro Intercreditor and Collateral Agency Agreement, dated as of November 18, 2005, among Deutsche Bank AG New York Branch, as U.K. Administrative Agent, The Bank of Nova Scotia, as Canadian Administrative Agent, Wells Fargo Bank, N.A., as First Priority Notes Trustee, Deutsche Bank AG New York Branch, as Euro Collateral Agent, Crown European Holdings SA, the subsidiaries of Crown European Holdings identified thereto and the other persons who may become parties to the Agreement from time to time pursuant to and in accordance with Section 6 of the Agreement, and any other obligor under any Financing Documents (as defined therein) (incorporated by reference to Exhibit 4.p of the Registrant's Current Report on Form 8-K dated November 18, 2005 (File No. 0-50189)).
  - 4.tt Supplemental Indenture, dated as of November 18, 2005, to Indenture, dated as of February 26, 2003, among Crown European Holdings SA, as Issuer, the Guarantors named therein and Wells Fargo Bank, National Association, as Trustee, relating to the dollar denominated 9 1/2% Second Priority Senior Secured Notes due 2011 and euro denominated 10 1/4% Second Priority Senior Secured Notes due 2011 (incorporated by reference to Exhibit 4.q of the Registrant's Current Report on Form 8-K dated November 18, 2005 (File No. 0-50189)).
  - 4.uu Supplemental Indenture, dated as of November 18, 2005, to Indenture, dated as of February 26, 2003, among Crown European Holdings SA, as Issuer, the Guarantors named therein and Wells Fargo Bank, National Association, as Trustee, relating to the 10 7/8% Third Priority Senior Secured Notes due 2013 (incorporated by reference to Exhibit 4.r of the Registrant's Current Report on Form 8-K dated November 18, 2005 (File No. 0-50189)).
  - 4.vv First Amendment to Credit Agreement, dated as of August 4, 2006, by and among Crown Americas LLC, as U.S. Borrower, the other undersigned Credit Parties, the undersigned financial institutions, including Deutsche Bank AG New York Branch, as Lenders, and Deutsche Bank AG New York Branch, as Administrative Agent and as Collateral Agent for Lenders, and with Deutsche Bank Securities, Inc. and Lehman Commercial Paper, Inc., as Joint Lead Arrangers for the Additional Term B Loans and as Joint Book Managers, and Lehman Commercial Paper, Inc., as Syndication Agent (incorporated by reference to Exhibit 4 of the Registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 2006 (File No. 0-50189)).
  - 4.ww Supplemental Indenture, dated as of December 6, 2006, to Indenture, dated as of September 1, 2004, among Crown European Holdings, as Issuer, the Guarantors named therein and Wells Fargo Bank, N.A., as Trustee, relating to the 6.25% First Priority Senior Secured Notes due 2011 (incorporated by reference to Exhibit 4.1 of the Registrant's Current Report on Form 8-K dated December 6, 2006 (File No. 0-50189)).
- Other long-term agreements of the Registrant are not filed pursuant to Item 601(b)(4)(iii)(A) of Regulation S-K, and the Registrant agrees to furnish copies of such agreements to the Securities and Exchange Commission upon its request.
- 10.a Second Amended and Restated Receivables Purchase Agreement, dated as of December 5, 2003, among Crown Cork & Seal Receivables (DE) Corporation, as Seller, CROWN Cork & Seal USA, Inc. (formerly known as Crown Cork & Seal Company (USA), Inc.), as Servicer, the banks and other financial institutions party thereto as Purchasers, and Citibank, N.A., as Agent (incorporated by reference to Exhibit 10.a of the Registrant's Annual Report on Form 10-K for the year ended December 31, 2003 (File No. 0-50189)).
  - 10.b First Amendment, dated as of September 1, 2004, to Second Amended and Restated Receivables Purchase Agreement among Crown Cork & Seal Receivables (DE) Corporation, as Seller, CROWN Cork & Seal USA, Inc. (formerly known as Crown Cork & Seal Company (USA), Inc.), as Servicer, the banks and other financial institutions party thereto, as Purchasers, and Citibank, N.A., as Agent (incorporated by reference to Exhibit 10.a of the Registrant's Current Report on Form 8-K dated September 1, 2004 (File No. 0-50189)).

**Crown Holdings, Inc.**

- 10.c First Amendment, dated as of September 1, 2004, to Second Amended and Restated Receivables Contribution and Sale Agreement among CROWN Cork & Seal USA, Inc. (formerly known as Crown Cork & Seal Company (USA), Inc.), CROWN Risdon USA, Inc. (formerly known as Risdon-AMS (USA), Inc.), CROWN Zeller USA, Inc. (formerly known as Zeller Plastik, Inc.), CROWN Metal Packaging Canada LP, and Crown Cork & Seal Receivables (DE) Corporation (incorporated by reference to Exhibit 10.b of the Registrant's Current Report on Form 8-K dated September 1, 2004 (File No. 0-50189)).
- 10.d Second Amended and Restated Receivables Contribution and Sale Agreement, dated as of December 5, 2003, among CROWN Cork & Seal USA, Inc. (formerly known as Crown Cork & Seal Company (USA), Inc.), CROWN Risdon USA, Inc. (formerly known as Risdon-AMS (USA), Inc.), CROWN Zeller USA, Inc. (formerly known as Zeller Plastik, Inc.), Crown Canadian Holdings ULC, and CROWN Metal Packaging Canada LP, as Sellers, Crown Cork & Seal Receivables (DE) Corporation, as Buyer, and CROWN Cork & Seal USA, Inc., as the Buyer's Servicer (incorporated by reference to Exhibit 10.b of the Registrant's Annual Report on Form 10-K for the year ended December 31, 2003 (File No. 0-50189)).
- 10.e Third Amended and Restated Parent Undertaking Agreement, dated as of September 1, 2004, made by Crown Holdings, Inc., Crown Cork & Seal Company, Inc. and Crown International Holdings, Inc. in favor of Citibank, N.A., as Agent and the Purchasers (incorporated by reference to Exhibit 10.c of the Registrant's Current Report on Form 8-K dated September 1, 2004 (File No. 0-50189)).
- 10.f Second Amended and Restated Intercreditor Agreement dated as of September 1, 2004, among Citibank, N.A., as Agent, Crown Holdings, Inc., Crown International Holdings, Inc., Crown Cork & Seal Company, Inc., Crown Cork & Seal Receivables (DE) Corporation, CROWN Cork & Seal USA, Inc. (formerly known as Crown Cork & Seal Company (USA), Inc.), CROWN Risdon USA, Inc. (formerly known as Risdon-AMS (USA), Inc.), CROWN Zeller USA, Inc. (formerly known as Zeller Plastik, Inc.), and Citicorp North America, Inc., as Administrative Agent and U.S. Collateral Agent (incorporated by reference to Exhibit 10.d of the Registrant's Current Report on Form 8-K dated September 1, 2004 (File No. 0-50189)).
- 10.g Intercreditor Agreement dated as of November 18, 2005, among Citibank, N.A., as Program Agent, the Company, Crown International Holdings, Inc., Crown Cork & Seal Company, Inc., Crown Cork & Seal Receivables (DE) Corporation, Crown Cork & Seal USA, Inc., Crown Risdon USA, Inc., CROWN Metal Packaging Canada LP and Deutsche Bank AG New York Branch and The Bank of Nova Scotia, as Bank Agent (incorporated by reference to Exhibit 10.a of the Registrant's Current Report on Form 8-K dated November 18, 2005 (File No. 0-50189)).
- 10.h Employment Contracts:
- (1) Employment contract between Crown Holdings, Inc. and John W. Conway, dated May 3, 2007 (incorporated by reference to Exhibit 10.1(a) of the Registrant's Quarterly Report on Form 10-Q for the quarter ended March 31, 2007 (File No. 0-50189)).
  - (2) Employment contract between Crown Holdings, Inc. and Alan W. Rutherford, dated May 3, 2007 (incorporated by reference to Exhibit 10.1(b) of the Registrant's Quarterly Report on Form 10-Q for the quarter ended March 31, 2007 (File No. 0-50189)).
  - (3) Employment contract between Crown Holdings, Inc. and William H. Voss, dated May 3, 2007 (incorporated by reference to Exhibit 10.1(c) of the Registrant's Quarterly Report on Form 10-Q for the quarter ended March 31, 2007 (File No. 0-50189)).
  - (4) Employment contract between Crown Holdings, Inc. and Frank J. Mechura, dated May 3, 2007 (incorporated by reference to Exhibit 10.1(d) of the Registrant's Quarterly Report on Form 10-Q for the quarter ended March 31, 2007 (File No. 0-50189)).
  - (5) Employment contract between Crown Holdings, Inc. and Timothy J. Donahue, dated May 3, 2007 (incorporated by reference to Exhibit 10.1(e) of the Registrant's Quarterly Report on Form 10-Q for the quarter ended March 31, 2007 (File No. 0-50189)).

**Crown Holdings, Inc.**

- (6) Employment contract between Crown Packaging UK PLC and Christopher C. Homfray, dated July 12, 2006.
- (7) Employment contract between Crown Holdings, Inc. and Raymond L. McGowan, Jr., dated May 3, 2007.
- 10.i Crown Cork & Seal Company, Inc. Executive Deferred Compensation Plan (incorporated by reference to Exhibit 10 of the Registrant's Annual Report on Form 10-K for the year ended December 31, 1991 (File No. 1-2227)).
- 10.j Crown Holdings, Inc. Economic Profit Incentive Plan, dated as of January 1, 2004 (incorporated by reference to Exhibit 10.i of the Registrant's Annual Report on Form 10-K for the year ended December 31, 2004 (File No. 0-50189)).
- 10.k Crown Holdings, Inc. Economic Profit Incentive Plan, dated as of January 1, 2005 (incorporated by reference to Exhibit 10.j of the Registrant's Annual Report on Form 10-K for the year ended December 31, 2004 (File No. 0-50189)).
- 10.l Crown Holdings, Inc. Senior Executive Retirement Plan, as amended and restated as of January 1, 2008.
- 10.m Senior Executive Retirement Agreements:
  - (1) Senior Executive Retirement Agreement between Crown Holdings, Inc. and John W. Conway, dated May 3, 2007 (incorporated by reference to Exhibit 10.4(a) of the Registrant's Quarterly Report on Form 10-Q for the quarter ended March 31, 2007 (File No. 0-50189)).
  - (2) Senior Executive Retirement Agreement between Crown Holdings, Inc. and Alan W. Rutherford, dated May 3, 2007 (incorporated by reference to Exhibit 10.4(b) of the Registrant's Quarterly Report on Form 10-Q for the quarter ended March 31, 2007 (File No. 0-50189)).
  - (3) Senior Executive Retirement Agreement between Crown Holdings, Inc. and William H. Voss, dated May 3, 2007 (incorporated by reference to Exhibit 10.4(c) of the Registrant's Quarterly Report on Form 10-Q for the quarter ended March 31, 2007 (File No. 0-50189)).
  - (4) Senior Executive Retirement Agreement between Crown Holdings, Inc. and Frank J. Mechura, dated May 3, 2007 (incorporated by reference to Exhibit 10.4(d) of the Registrant's Quarterly Report on Form 10-Q for the quarter ended March 31, 2007 (File No. 0-50189)).
  - (5) Senior Executive Retirement Agreement between Crown Holdings, Inc. and Timothy J. Donahue, dated May 3, 2007 (incorporated by reference to Exhibit 10.4(e) of the Registrant's Quarterly Report on Form 10-Q for the quarter ended March 31, 2007 (File No. 0-50189)).
  - (6) Senior Executive Retirement Agreement between Crown Holdings, Inc. and Christopher C. Homfray, effective January 1, 2008.
  - (7) Senior Executive Retirement Agreement between Crown Holdings, Inc. and Raymond L. McGowan, Jr., dated May 3, 2007.
  - (8) Senior Executive Retirement Agreement between Crown Holdings, Inc. and Jozef Salaerts, effective January 1, 2008.
- 10.n Crown Holdings, Inc. 1990 Stock-Based Incentive Compensation Plan (incorporated by reference to Exhibit 10.2 of the Registrant's Annual Report on Form 10-K for the year ended December 31, 1992 (File No. 1-2227)).
- 10.o Amendment No. 1 to the Crown Holdings, Inc. 1990 Stock-Based Incentive Compensation Plan, dated as of September 21, 1998 (incorporated by reference to Exhibit 10.a of the Registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 1999 (File No. 1-2227)).

**Crown Holdings, Inc.**

- 10.p Amendment No. 2 to the Crown Holdings, Inc. 1990 Stock-Based Incentive Compensation Plan, dated as of January 1, 2003 (incorporated by reference to Exhibit 10.k of the Registrant's Annual Report on Form 10-K for the year ended December 31, 2002 (File No. 0-50189)).
- 10.q Amendment No. 3, effective December 14, 2006, to the Crown Holdings, Inc. 1990 Stock-Based Incentive Compensation Plan (incorporated by reference to Exhibit 10.q of the Registrant's Annual Report on Form 10-K for the year ended December 31, 2006 (File No. 0-50189)).
- 10.r Crown Holdings, Inc. Stock Purchase Plan (incorporated by reference to Exhibit 4.3 of the Registrant's Registration Statement on Form S-8, filed with the Securities and Exchange Commission on March 16, 1994 (Registration No. 33-52699)).
- 10.s Crown Holdings, Inc. 1994 Stock-Based Incentive Compensation Plan (incorporated by reference to Exhibit 10.g of the Registrant's Annual Report on Form 10-K for the year ended December 31, 1994 (File No. 1-2227)).
- 10.t Amendment No. 1 to the Crown Holdings, Inc. 1994 Stock-Based Incentive Compensation Plan, dated as of September 21, 1998 (incorporated by reference to Exhibit 10.b of the Registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 1999 (File No. 1-2227)).
- 10.u Amendment No. 2 to the Crown Holdings, Inc. 1994 Stock-Based Incentive Compensation Plan, dated as of January 1, 2003 (incorporated by reference to Exhibit 10.o of the Registrant's Annual Report on Form 10-K for the year ended December 31, 2002 (File No. 0-50189)).
- 10.v Amendment No. 3, effective December 14, 2006, to the Crown Holdings, Inc. 1994 Stock-Based Incentive Compensation Plan (incorporated by reference to Exhibit 10.v of the Registrant's Annual Report on Form 10-K for the year ended December 31, 2006 (File No. 0-50189)).
- 10.w Crown Holdings, Inc. 1997 Stock-Based Incentive Compensation Plan, amended and restated (incorporated by reference to the Registrant's Definitive Additional Materials on Schedule 14A, filed with the Securities and Exchange Commission on April 13, 2000 (File No. 1-2227)).
- 10.x Amendment No. 3 to the Crown Holdings, Inc. 1997 Stock-Based Incentive Compensation Plan, dated as of January 1, 2003 (incorporated by reference to Exhibit 10.q of the Registrant's Annual Report on Form 10-K for the year ended December 31, 2002 (File No. 0-50189)).
- 10.y Amendment No. 4, effective December 14, 2006, to the Crown Holdings, Inc. 1997 Stock-Based Incentive Compensation Plan (incorporated by reference to Exhibit 10.y of the Registrant's Annual Report on Form 10-K for the year ended December 31, 2006 (File No. 0-50189)).
- 10.z Crown Holdings, Inc. 2001 Stock-Based Incentive Compensation Plan, dated as of February 22, 2001 (incorporated by reference to the Registrant's Definitive Proxy Statement on Schedule 14A, filed with the Securities and Exchange Commission on March 27, 2001 (File No. 1-2227)).
- 10.aa Amendment No. 1 to the Crown Holdings, Inc. 2001 Stock-Based Incentive Compensation Plan, dated as of January 1, 2003 (incorporated by reference to Exhibit 10.s of the Registrant's Annual Report on Form 10-K for the year ended December 31, 2002 (File No. 0-50189)).
- 10.bb Amendment No. 2, effective December 14, 2006, to the Crown Holdings, Inc. 2001 Stock-Based Incentive Compensation Plan (incorporated by reference to Exhibit 10.bb of the Registrant's Annual Report on Form 10-K for the year ended December 31, 2006 (File No. 0-50189)).
- 10.cc Form of Agreement for Restricted Stock Awards under Crown Holdings, Inc. 2004 Stock-Based Incentive Compensation Plan (incorporated by reference to Exhibit 10.x of the Registrant's Annual Report on Form 10-K for the year ended December 31, 2004 (File No. 0-50189)).
- 10.dd Form of Agreement for Restricted Stock Awards under Crown Holdings, Inc. 2006 Stock-Based Incentive Compensation Plan (incorporated by reference to Exhibit 10.dd of the Registrant's Annual Report on Form 10-K for the year ended December 31, 2006 (File No. 0-50189)).

**Crown Holdings, Inc.**

- 10. ee Crown Holdings, Inc. 2004 Stock-Based Incentive Compensation Plan, dated as of April 22, 2004 (incorporated by reference to the Registrant's Definitive Proxy Statement on Schedule 14A, filed with the Securities and Exchange Commission on March 19, 2004 (File No. 0-50189)).
- 10. ff Amendment No. 1, effective December 14, 2006, to the Crown Holdings, Inc. 2004 Stock-Based Incentive Compensation Plan (incorporated by reference to Exhibit 10. ff of the Registrant's Annual Report on Form 10-K for the year ended December 31, 2006 (File No. 0-50189)).
- 10. gg Form of Agreement for Non-Qualified Stock Option Awards under Crown Holdings, Inc. 2004 Stock-Based Incentive Compensation Plan (incorporated by reference to Exhibit 10. 6 of the Registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 2004 (File No. 0-51089)).
- 10. hh Crown Cork & Seal Company, Inc. Deferred Compensation Plan for Directors, dated as of October 27, 1994 (incorporated by reference to Exhibit 10. b of the Registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 1995 (File No. 1-2227)).
- 10. ii Crown Holdings, Inc. Stock Compensation Plan for Non-Employee Directors, dated as of April 22, 2004 (incorporated by reference to the Registrant's Definitive Proxy Statement on Schedule 14A, filed with the Securities and Exchange Commission on March 19, 2004 (File No. 0-50189)).
- 10. jj Crown Cork & Seal Company, Inc. Pension Plan for Outside Directors, dated as of October 27, 1994 (incorporated by reference to Exhibit 10. c of the Registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 1995 (File No. 1-2227)).
- 10. kk Amendment No. 1, effective April 1, 2005, to the Crown Holdings, Inc. Stock Compensation Plan for Non-Employee Directors, dated as of April 22, 2004 (incorporated by reference to Exhibit 10 to the Registrant's Quarterly Report on Form 10-Q for the quarter ended March 31, 2005 (File No. 0-50189)).
- 10. ll Master Definitions Agreement, dated June 21, 2005, between France Titrisation, as Management Company, BNP Paribas, as Custodian Calculation Agent, FCC Account Bank, Liquidity Facility Provider and Swap Counterparty, Eliopée Limited, as Eliopée, GE Factofrance, as Back-up Servicer, Crown European Holdings, as Parent Company, the Entities listed in Schedule, as Sellers or Servicers, CROWN Emballage France SAS, as French Administrative Agent and CROWN Packaging UK PLC, as English Administrative Agent (incorporated by reference to Exhibit 10. a to the Registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 2005 (File No. 0-50189)).
- 10. mm Master Receivables Transfer and Servicing Agreement, dated June 21, 2005, between France Titrisation, as Management Company, BNP Paribas, as Custodian, the Entities listed in Schedule 1 of Appendix 1, as Sellers or Servicers, CROWN Emballage France SAS, as French Administrative Agent and CROWN Packaging UK PLC, as English Administrative Agent (incorporated by reference to Exhibit 10. b to the Registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 2005 (File No. 0-50189)).
- 10. nn Crown Holdings, Inc. 2006 Stock-Based Incentive Compensation Plan (incorporated by reference to the Registrant's Definitive Proxy Statement on Schedule 14A, filed with the Securities and Exchange Commission on March 24, 2006 (File No. 0-50189)).
- 10. oo Amendment No. 1, effective December 14, 2006, to the Crown Holdings, Inc. 2006 Stock-Based Incentive Compensation Plan (incorporated by reference to Exhibit 10. pp of the Registrant's Annual Report on Form 10-K for the year ended December 31, 2006 (File No. 0-50189)).
- 10. pp Form of Agreement for Non-Qualified Stock Option Awards under Crown Holdings, Inc. 2006 Stock-Based Incentive Compensation Plan (incorporated by reference to Exhibit 10. 2 of the Registrant's Quarterly Report on Form 10-Q for the quarter ended March 31, 2007 (File No. 0-50189)).



**Crown Holdings, Inc.**

Exhibits 10.h through 10.pp inclusive, are management contracts or compensatory plans or arrangements required to be filed as exhibits pursuant to Item 14(c) of this Report.

- 12. Computation of ratio of earnings to fixed charges.
  - 18.1 Letter, dated February 28, 2008, from PricewaterhouseCoopers LLP.
  - 21. Subsidiaries of Registrant.
  - 23. Consent of Independent Registered Public Accounting Firm.
  - 31.1 Certification of Chief Executive Officer pursuant to Rule 13a-14(a) or 15d-14(a) of the Securities and Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
  - 31.2 Certification of Chief Financial Officer pursuant to Rule 13a-14(a) or 15d-14(a) of the Securities and Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
  - 32. Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, executed by John W. Conway, Chairman of the Board, President and Chief Executive Officer of Crown Holdings, Inc. and Alan W. Rutherford, Vice Chairman of the Board, Executive Vice President and Chief Financial Officer of Crown Holdings, Inc.
  - 99. Separate financial statements of affiliates whose securities are pledged as collateral.
- c) The consolidated statements and notes thereto and financial statement schedule for Crown Cork & Seal Company, Inc., included in Exhibit 99 above, are incorporated herein by reference.

**Crown Holdings, Inc.**

**SIGNATURES**

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

Crown Holdings, Inc.  
Registrant

Date: February 28, 2008

By: /s/ Thomas A. Kelly  
Thomas A. Kelly  
Vice President and Corporate Controller

**POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints John W. Conway, Alan W. Rutherford and William T. Gallagher, and each of them, his true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities to sign any and all amendments to the Annual Report on Form 10-K for the Company's 2007 fiscal year, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or either of them, or their or his substitutes, may lawfully do or cause to be done by virtue thereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the date indicated above.

**SIGNATURE**

**TITLE**

/s/ John W. Conway

John W. Conway

Chairman of the Board, President  
and Chief Executive Officer

/s/ Alan W. Rutherford

Alan W. Rutherford

Vice Chairman of the Board, Executive Vice President  
and Chief Financial Officer

/s/ Thomas A. Kelly

Thomas A. Kelly

Vice President and Corporate Controller

**SIGNATURE**

**DIRECTORS**

/s/ Jenne K. Britell

Jenne K. Britell

/s/ Thomas R. Ralph

Thomas R. Ralph

/s/ Arnold W. Donald

Arnold W. Donald

/s/ Hugues du Rouret

Hugues du Rouret

/s/ William G. Little

William G. Little

/s/ Jim L. Turner

Jim L. Turner

/s/ Hans J. Löliger

Hans J. Löliger

/s/ William S. Urkiel

William S. Urkiel

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## Division Officers

### Americas Division

**Raymond L. McGowan, Jr.**  
President

**Robert J. Truitt**  
President – CROWN  
Beverage Packaging  
North America

**David R. Underwood**  
President – CROWN Food  
Packaging North America

**Alfred J. Waring**  
President – CROWN Metal  
Packaging Canada

**James D. Wilson**  
President – CROWN  
Aerosol Packaging USA

**Joseph R. Pierce**  
President – CROWN  
Closures and Specialty  
Packaging USA

**William Filotas**  
President – Latin America  
and Caribbean

**Patrick D. Szmyt**  
Senior Vice President and  
Chief Financial Officer

**E. C. Norris Roberts**  
Executive Vice President –  
Information Systems, Planning  
and World-Class Performance

**Gary L. Burgess**  
Senior Vice President –  
Human Resources

**Edward C. Vesey**  
Senior Vice President –  
Sourcing

### Asia-Pacific Division

**Jozef Salaerts**  
President

**Hock Huat Goh**  
Senior Vice President – Finance and  
H.R. and Chief Financial Officer

**Siu Kee Tse**  
Vice President – China and  
Hong Kong

**Ng Seng Yap**  
Vice President – Beverage Cans –  
South East Asia

**Patrick Lee**  
Vice President – Thailand

**Gary Fishlock**  
Vice President – Manufacturing

**Patrick Ng**  
Director – Purchasing

### European Division

**Christopher Homfray**  
President

**Peter Calder**  
Senior Vice President – Human  
Resources and Communications

**Olivier Aubry**  
Vice President – Commercial,  
CROWN Food Europe

**Ashok Kapoor**  
Chairman and Managing Director  
– CROWN Hellas Can and Vice  
President – Business Development,  
CROWN Bevcan Europe and  
Middle East

**Guglielmo Prati**  
Vice President – CROWN  
Food Italy

**Terry Cartwright**  
Senior Vice President – CROWN  
Bevcan Europe and Middle East

**Paul Browett**  
Vice President and Treasurer

**Peter Collier**  
Vice President – CROWN  
Closures Europe

**Ralph Lambert**  
Vice President – CROWN  
Bevcan Eastern Europe

**Martin Reynolds**  
Vice President – External  
and Regulatory Affairs

**John Clinton**  
Senior Vice President – Sourcing

**Howard Lomax**  
Senior Vice President and  
Chief Financial Officer

**Terry Dobb**  
Vice President and  
Chief Information Officer

**Peter Lockley**  
Vice President – Commercial,  
CROWN Bevcan Europe and  
Middle East

**Brian Rogers**  
Vice President – Operations,  
CROWN Bevcan Europe and  
Middle East

**Peter Nuttall**  
Senior Vice President –  
CROWN Food Europe

**Laurent Dondin**  
Vice President – Fish and  
Africa, CROWN Food Europe

**Inigo d'Ornellas**  
Vice President and Controller

**Pierre Sirbat**  
Vice President – EHS and Quality

**Nicolas Anthon**  
Vice President – CROWN  
Aerosols Europe

**Lakon Holloway**  
Vice President and  
General Counsel

**Ziya Ozay**  
Vice President – CROWN  
Bevcan Middle East

**Didier Sourisseau**  
Vice President – CROWN  
Speciality Packaging Europe

**Olivier Tanneau**  
Vice President – Operations,  
CROWN Food Europe

### CROWN Packaging Technology

**Daniel A. Abramowicz**  
President

**Michael J. A. Curtis**  
Vice President –  
Engineering Development

**Leonard Jenkins**  
Vice President –  
Technology Development

**Ian Bucklow**  
Director –  
Materials Development

**Nigel Wakely**  
Director – Finance

## Investor Information

### Company Profile

Crown Holdings, Inc. is a leading manufacturer of packaging products for consumer marketing companies around the world. We make a wide range of metal packaging for food, beverage, household and personal care and industrial products and metal caps and closures. As of December 31, 2007, the Company operated 141 plants located in 41 countries, employing 21,819 people.

### STOCK TRADING INFORMATION

Stock Symbol: **CCK** (Common)

Stock Exchange Listing: **New York Stock Exchange**

**CCK**  
NYSE

### Corporate Headquarters

One Crown Way  
Philadelphia, PA 19154-4599  
Main phone: (215) 698-5100

### Shareholder Services

Registered shareholders needing information about stock holdings, transfer requirements, registration changes, account consolidations, lost certificates or address changes should contact the Company's stock transfer agent and registrar:

#### Mailing Address:

Wells Fargo Bank Minnesota, N.A.  
Shareholder Services  
161 North Concord Exchange  
South St. Paul, MN 55075

#### General Telephone Number:

1-800-468-9716

#### Internet website:

<http://www.wellsfargo.com/shareownerservices>

Owners of shares held in street name (shares held by any bank or broker in the name of the bank or brokerage house) should direct communications or administrative matters to their bank or stockbroker.

### Form 10-K and Other Reports

The Company will provide without charge a copy of its 2007 Annual Report on Form 10-K, excluding exhibits, as filed with the U.S. Securities and Exchange Commission ("SEC"). To request a copy of the Company's annual report, call toll free 888-400-7789. Canadian callers should dial 888-757-5989. Copies in electronic format of the Company's annual report and filings with the SEC are available at the Company's website at <http://www.crowncork.com> in the Investor section under Annual Report and SEC filings.

### Internet

Visit our website on the Internet at <http://www.crowncork.com> for more information about the Company, including news releases and investor information.

### Certifications

The Company included as Exhibit 31 to its 2007 Annual Report on Form 10-K, as filed with the U.S. Securities and Exchange Commission, certifications of the Chief Executive Officer and Chief Financial Officer of the Company. The CEO and CFO certify to, among other things, the information contained in the Company's Form 10-K. The Company has also submitted to the New York Stock Exchange a certification from the CEO certifying that he is not aware of any violation by the Company of New York Stock Exchange corporate governance listing standards.

**INCORPORATED — COMMONWEALTH OF  
PENNSYLVANIA**



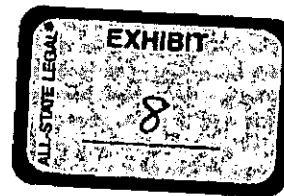
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Crown Holdings, Inc.  
Corporate Headquarters  
One Crown Way  
Philadelphia, PA 19154-4599

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NEWPORT NEWS

SANDRA KAY ONEY, Executor Of )  
the Estate of SHARON VAUGHN ) AT LAW NO.  
ONEY, Deceased, ) 00301TF  
Plaintiff, )  
v. )  
JOHN CRANE, INC., )  
Defendants. )



*Exhibits 8 & 9  
also given to  
Sente.*

TRANSCRIPT OF PROCEEDINGS

Newport News, Virginia

DAY 3

March 28, 2007

BEFORE:

THE HONORABLE TIMOTHY S. FISHER, Judge, and a  
Jury.

-----  
TAYLOE ASSOCIATES, INC.

Registered Professional Reporters

Telephone: (757) 461-1984

Norfolk, Virginia

TAYLOE ASSOCIATES, INC.

1      Appearances:

2            On behalf of the Plaintiff:

3            PATTEN, WORNOM, HATTEN & DIAMONSTEIN, LC  
4            ROBERT R. HATTEN, ESQUIRE  
5            J. CONARD METCALF, ESQUIRE  
6            HUGH B. McCORMICK, III, ESQUIRE  
7            WILLIAM W.C. HARTY, ESQUIRE  
8            12350 Jefferson Avenue, Suite 300  
9            Newport News, Virginia 23602  
10           (757) 223-4544

12           On behalf of the Defendant:

13           WALLACE PLEDGER, LLC  
14           ARCHIBALD WALLACE, III, ESQUIRE  
15           PATRICIA J. BUGG, ESQUIRE  
16           STEPHEN A. BRYANT, ESQUIRE  
17           7100 Forest Avenue  
18           Richmond, Virginia 23226  
19           (804) 282-8300

20           and

21           O'CONNELL, TIVIN, MILLER & BURNS, LLC  
22           DANIEL J. O'CONNELL, ESQUIRE  
23           645 Tollgate Road, Suite 220  
24           Elgin, Illinois 60123  
25           (847) 741-4603

TAYLOE ASSOCIATES, INC.



1 and symptoms often include shortness of breath and  
2 pain in the chest, sometimes cough. Those symptoms  
3 are very often the result of a pleural effusion. The  
4 pleural effusion causes collapse of the lung; hence,  
5 the shortness of breath and also resulting in a cough  
6 in some individuals.

7           Depending upon how advanced the tumor is,  
8 whether it's invaded the chest wall yet or not, there  
9 will be discomfort or pain in the chest. So, at the  
10 time of diagnosis those are the most common presenting  
11 symptoms and signs. After diagnosis, depending upon  
12 what's done to the patient, there may be partial  
13 resolution of some of those symptoms, but eventually  
14 there will be progression of symptoms of that same  
15 sort.

16           Q.     All right. How long -- well, in the  
17 chart that you had of the development of the disease  
18 when does the cancer start, as compared to when it is  
19 actually diagnosed?

20           A.     Well, on this chart the tumor would start  
21 at about this point (indicating) and would be  
22 diagnosed at about this point.

23                   Now, this would be the point where  
24 there's initiation of the tumor, but all along, you  
25 know, before as well as after initiation, there would

1 still be promotion of the tumor.

2 Q. All right. Now, has the medical and  
3 scientific community developed literature as to what  
4 types of asbestos fibers cause mesothelioma?

5 A. Yes, sir, there are many medical  
6 articles, many physicians have spoken about that, and  
7 also a number of different governmental groups have  
8 considered that question, and the conclusion of all of  
9 them is that all types of asbestos can cause  
10 mesothelioma.

11 Q. And what are the various types again that  
12 can cause mesothelioma?

13 A. Well, there's the commercial forms of  
14 asbestos and the non-commercial forms.

15 The commercial forms include chrysotile  
16 asbestos, which was used for 90 to 95 percent of the  
17 applications in the United States, amosite asbestos,  
18 which was used for somewhere around 4 or 5 percent of  
19 the applications in the United States, crocidolite  
20 asbestos, that was used for perhaps one percent of the  
21 applications in the United States -- it was used more  
22 extensively in other countries but less in the United  
23 States -- and then there's a variety of amphiboles  
24 that are not commercial forms of asbestos but are  
25 generally found as impurities in chrysotile asbestos.

1 Q. Can you explain what this chart shows and  
2 what significance, if any, it has to the opinion you  
3 just expressed?

4 A. Well, yes, sir. This is a chart that  
5 takes into account a clearance half-life of 20 years  
6 for amphibole asbestos and a clearance half-life of  
7 one year for chrysotile asbestos. And this would show  
8 the relative proportions that would be left after  
9 30 years, 20 years, 10 years, and so forth.

10 Looking at ten years, 20 years and 30  
11 years specifically, at ten years you'd have 70 percent  
12 of your amphibole left, but you'd only have one  
13 one-thousandth of the chrysotile still left. At  
14 20 years it would be about half of your amphibole that  
15 you started with but one one-millionth of the  
16 chrysotile. At 30 years it would be approximately  
17 one-third of the amphibole you started with but about  
18 one one-billionth of the chrysotile that you started  
19 with.

20 And, as I said, this is using a clearance  
21 half-life of one year for chrysotile. If you use  
22 something shorter, like six weeks, it would go up by  
23 an extra set of powers of ten for chrysotile.

24 Q. So, if you have a ten-year interval  
25 between the time of -- that a mesothelioma begins and

1 the time that it's actually diagnosed what effect  
2 would that ten years have on the presence of  
3 chrysotile that could be found if someone tried to  
4 look for it at the time of diagnosis?

5 A. Well, using these estimations of  
6 half-life, each ten-year period is going to give you  
7 one one-thousandth of the chrysotile that you had at  
8 the beginning of that period of time.

9 Q. Is there a difference of the amount of  
10 time that chrysotile stays in the lung versus  
11 amphiboles?

12 A. Yes, there is.

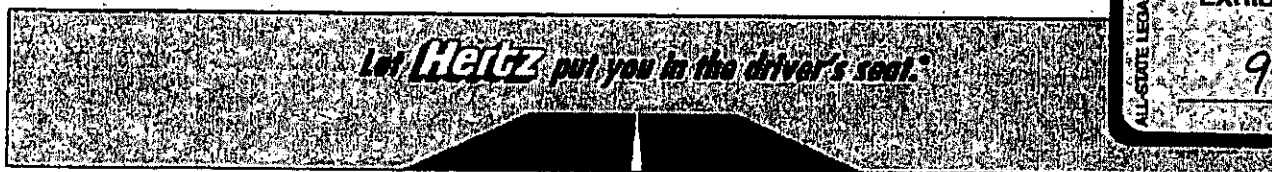
13 Q. And does this illustrate that point?

14 A. I believe it does, yes.

15 Q. What influence, if any, does the lack of  
16 persistence of chrysotile in the lung have upon the  
17 causation of mesothelioma by chrysotile, if any?

18 A. Well, I think that to understand  
19 clearance first of all you have to understand where is  
20 it being cleared to. Some of it is being coughed up,  
21 but, at the same time, a significant amount of it is  
22 being translocated from the lung tissue into the  
23 pleural space.

24 Yes, amphiboles are generally regarded to  
25 be more potent in the causation of mesothelioma, but



## Los Angeles Times Business



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[Archive for Thursday, August 26, 1999](#)

# Now's a Good Time to Buy Corporate Bonds, Pros Say

August 26, 1999 in print edition C-4

Investors who wish they had locked in high rates on U.S. Treasury securities two weeks ago still have a shot to grab decent yields—if they're willing to take more risk.

Yields on corporate bonds, including high-quality bonds and lower-rated "junk" issues, haven't fallen nearly as far as Treasury yields. What's more, many companies are planning to issue new bonds in the next two months, which could keep supply, and yields, high.

In the junk-bond market, the yield on the KDP Investment Advisors index of 100 junk issues has eased to about 10.3% now from a peak of 10.5% on Aug. 11.

By contrast, the yield on 10-year Treasury notes slid from 6.15% to 5.72% in that period.

With corporate yields still at significant premiums to Treasury issues, many money managers say corporates are good buys.

Yield spreads between corporates and Treasuries are "extremely attractive" on a historical basis, said Michael Hansen, bond manager at First Investment Group in Omaha.

Moreover, "September is being set up to have a lot of [new issues], which will probably put pressure on spreads," said Wayne Schmlidt, a bond manager at Advantus Capital Management in St. Paul, Minn.

Among major companies, Wells Fargo on Wednesday sold \$750 million of three-year notes at a yield of 6.61%, about 0.90-point above the yield on three-year Treasuries.

Crown Cork & Seal, the largest food and beverage can maker, sold \$350 million of three-year notes at a yield of 7.21%. The notes are rated "BBB" by Standard & Poor's, one letter grade above junk status.

Of course, buyers of corporate bonds also must be willing to accept the risk of default, however small that might be with most issuers. And should the economy fall into recession, the value of many corporate issues could sink even if the companies have no trouble making interest payments.

Among popular bond mutual funds, share prices have rallied in recent weeks as interest rates have come down. But yields on many of the funds still are above what was available in spring.

The net asset value of the Class A shares of the Pimco Total Return bond fund was \$10.12 on Wednesday, up 2.2% from the recent low of \$9.90 on Aug. 10. But the net asset value was \$10.40 in mid-April.

As bond fund share prices fall, the interest yield for a new buyer rises, barring major portfolio changes.

Bloomberg News and Reuters were used in compiling this report.

(BEGIN TEXT OF INFOBOX / INFOGRAPHIC)

Far to Go

The net asset value of the Class A shares of the Pimco Total Return bond fund have rebounded from their recent low as bond yields have eased. But the shares remain far below spring levels.

Weekly closes and latest

Wednesday: \$10.12

Source: Bridge Information Systems

#### Related Articles

- Look out below if long rates go higher Feb 16, 2008
- Safe mode nets gains for bonds Jan 08, 2008
- YOUR MONEY: MUTUAL FUND QUARTERLY - Bonds struggle for footing - Most fund categories' total returns finish the quarter in negative or barely positive territory. Jul 08, 2007
- TOM PETRUNO / MARKET BEAT - Wall Street can't cage its mortgage monster Jul 22, 2007
- MUTUAL FUND QUARTERLY - Time to exit bond bunker? - If market turmoil keeps abating, 'safe' U.S. securities may end their strong performance. Oct 07, 2007

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## About Crown Brand-Building Packaging™

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### Helping companies build brands worldwide



#### Letter from John Conway

Let me be the first to welcome you to Crown Holdings, Inc. Whether you're getting to know Crown for the first time, or are a long time friend, this site will provide the resources you need to increase turnover at the retail shelf, add differentiation and build consumer loyalty -in short, to use packaging as a powerful means to build stronger brands.

Crown is proud to be the leader in metal packaging technology. With operations in 42 countries employing over 24,000 people and net sales of \$6.9 billion, we provide global breadth as well as regional expertise. We're also proud of our World-Class Performance standards and the innovations provided to the industry from our technology centers.

All of these things add up to what we do best: helping companies build brands worldwide. Our commitment to helping launch successful new brands, invigorate existing brands, and drive business regionally and globally is our key to success.

So I hope you'll explore our site and return often to learn how Crown's Brand-Building Packaging™ can help you build business today.

#### John W. Conway

Chairman of the Board, President and Chief Executive Officer  
Crown Holdings, Inc.

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## Crown Press Room Corporate Fact File

Crown Holdings, Inc. (NYSE: CCK), through its subsidiaries, is a leading supplier of packaging products to consumer marketing companies around the world.

### Company Snapshot

- Date Founded: 1892
- Chairman of the Board, President & CEO: John W. Conway (since 2001)
- World Headquarters: Philadelphia, PA
- Americas Division Headquarters: Philadelphia, PA
- Asia-Pacific Division Headquarters: Singapore
- European Division Headquarters: Paris, France
- Facilities: 155 manufacturing plants in 42 countries.
- Key Research and Development Centers: Alsip, IL and Wantage, United Kingdom
- Employees: 24,055
- 2005 Net Sales: \$6.9 billion

### Business Segments

Crown's operations are divided into the following product lines within each of the divisions:

- Aerosol Packaging
- Beverage Packaging
- Food Packaging
- Metal Closures
- Speciality Packaging

### Markets Served

- Drinks
- Food
- Health & Beauty
- Household/Industrial
- Luxury Goods
- Promotional

### Market Positions

- One of the largest packaging companies in the world
- Only full-line global packaging company
- #1 producer of food cans and metal vacuum closures in the world
- #3 producer of beverage cans in the world
- #1 or #2 producer of aerosol cans in markets where we compete

[Contact Corporate Headquarters](#)



Crown Holdings, Inc.  
One Crown Way  
Philadelphia, PA 19154-4599  
Tel: (215) 698-5100

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090099588

## HOUSE BILL NO. 1762

Offered January 14, 2009

Prefiled January 8, 2009

A BILL to amend the Code of Virginia by adding a section numbered 13.1-721.2, relating to asbestos-related liabilities of successor corporations.

Patron—Kilgore

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 13.1-721.2, as follows:

§ 13.1-721.2. Applicability of limitations on successor asbestos-related liabilities.

A. As used in this section:

"Asbestos claim" means any claim, wherever or whenever made, for damages, losses, indemnification, contribution, or other relief arising out of, based on, or in any way related to asbestos, to the extent such claims are recognized under the laws of the Commonwealth, including (i) any claim related to the health effects of exposure to asbestos, including any claim for personal injury or death, mental or emotional injury, risk of disease or other injury, or the costs of medical monitoring or surveillance; (ii) any claim made by or on behalf of any person exposed to asbestos, or a representative, spouse, parent, child, or other relative of the person; and (iii) any claim for damage or loss caused by the installation, presence, or removal of asbestos.

"Corporation" means a corporation for profit, including a domestic corporation organized under the laws of the Commonwealth, or a foreign corporation.

"Successor" means a corporation that assumes or incurs, or has assumed or incurred, successor asbestos-related liabilities.

"Successor asbestos-related liabilities" means any liabilities, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due, that are related in any way to asbestos claims, and that were assumed or incurred by a corporation as a result of or in connection with a merger or consolidation, or the plan of merger or consolidation related to the merger or consolidation, with or into another corporation or that are related in any way to asbestos claims based on the exercise of control or the ownership of stock of the corporation before the merger or consolidation. The term includes liabilities that, after the time of the merger or consolidation for which the fair market value of total gross assets is determined under subsection F, are or were paid or otherwise discharged, or committed to be paid or otherwise discharged, by or on behalf of the corporation, or by a successor of the corporation, or by or on behalf of a transferor, in connection with settlements, judgments, or other discharges in the Commonwealth or another jurisdiction.

"Total gross assets" includes intangible assets.

"Transferor" means a corporation from which successor asbestos-related liabilities are or were assumed or incurred.

B. The limitations in subsection D shall apply to a corporation that is a successor and became a successor prior to January 1, 1972, and to any successors of that corporation.

C. The limitations in subsection D shall not apply to:

1. Workers' compensation benefits paid by or on behalf of an employer to an employee under Title 65.2 or a comparable workers' compensation law of another jurisdiction;

2. Any claim against a corporation that does not constitute a successor asbestos-related liability; or

3. Any obligation under the National Labor Relations Act (29 U.S.C. § 151 et seq.), as amended, or under any collective bargaining agreement.

D. Except as provided in subsection E, the cumulative successor asbestos-related liabilities of a corporation are limited to the fair market value of the total gross assets of the transferor determined as of the time of the merger or consolidation. The corporation is not responsible for successor asbestos-related liabilities in excess of this limitation.

E. If the transferor assumed or incurred successor asbestos-related liabilities in connection with a prior merger or consolidation with a prior transferor, then the fair market value of the total assets of the prior transferor, determined as of the time of the earlier merger or consolidation, shall be substituted for the limitation set forth in subsection D for purposes of determining the limitation of liability of a corporation.

F. A corporation may establish the fair market value of total gross assets for the purpose of the

INTRODUCED

HB1762

59 limitations under subsection D through any method reasonable under the circumstances, including:

60 1. By reference to the going-concern value of the assets or to the purchase price attributable to or  
61 paid for the assets in an arm's-length transaction; or

62 2. In the absence of other readily available information from which fair market value can be  
63 determined, by reference to the value of the assets recorded on a balance sheet.

64 G. To the extent total gross assets include any liability insurance issued to the transferor whose  
65 assets are being valued for purposes of this section, the applicability, assignability, terms, conditions,  
66 and limits of such insurance shall not be affected by this chapter, nor shall this chapter otherwise affect  
67 the rights and obligations of a transferor, successor, or insurer under any insurance contract or related  
68 agreement, including, but not limited to, rights and obligations under pre-enactment settlements between  
69 a transferor or successor and its insurers resolving liability insurance coverage, and the rights of an  
70 insurer to seek payment for applicable deductibles, retrospective premiums, or self-insured retentions or  
71 to seek contribution from a successor for uninsured or self-insured periods or periods where insurance  
72 is uncollectible or otherwise unavailable. To the extent total gross assets include any such liability  
73 insurance, a settlement of a dispute concerning such liability insurance coverage entered into by a  
74 transferor or successor with the insurers of the transferor before the effective date of this chapter shall  
75 be determinative of the total coverage of such liability insurance to be included in the calculation of the  
76 transferor's total gross assets.

77 H. Except as provided in subdivisions 1, 2, and 3, the fair market value of total gross assets at the  
78 time of a merger or consolidation increases annually at a rate that is equal to the sum of (i) the prime  
79 rate as listed in the first edition of the Wall Street Journal published for each calendar year since the  
80 merger or consolidation, unless the prime rate is not published in that edition, in which case a  
81 reasonable determination of the prime rate on the first day of the year may be used, and (ii) one  
82 percent. Notwithstanding the foregoing provisions of this subsection:

83 1. The rate to be determined in accordance with in the first sentence of this subsection is not  
84 compounded;

85 2. The adjustment of fair market value of total gross assets continues as provided in the first  
86 sentence of this subsection until the date the adjusted value is first exceeded by the cumulative amounts  
87 of successor asbestos-related liabilities paid or committed to be paid by or on behalf of the corporation  
88 or a predecessor, or by or on behalf of a transferor, after the time of the merger or consolidation for  
89 which the fair market value of total gross assets is determined; and

90 3. No adjustment of the fair market value of total gross assets shall be applied to any liability  
91 insurance that may be included pursuant to subsection G in the determination of total gross assets.

92 I. To the fullest extent permissible, courts shall liberally apply the limitations under this section to  
93 the issue of successor asbestos-related liabilities.

94 J. If any provision of this section or the application thereof to any person or circumstance is held  
95 invalid, such invalidity shall not affect the provisions or applications of this section that can be given  
96 effect without the invalid provision or application, and to that end the provisions of this section are  
97 severable.

98 K. This section shall apply to all asbestos claims filed on or after July 1, 2009, and to all pending  
99 asbestos claims for which trial had not commenced as of such date, except that any provisions of this  
100 section that would be unconstitutional if applied retroactively shall only be applied prospectively.



Introduced Version

\*\*\*

SENATE BILL No. \_\_\_\_\_

The Office of Fiscal and Management  
Analysis has determined this bill has  
**NO FISCAL IMPACT**

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-6-2; IC 34-31-8.

Synopsis: Limited liability for certain asbestos claims. Limits civil liability arising from asbestos claims for certain corporations.

Effective: July 1, 2009.

**Boots**

\_\_\_\_\_, read first time and referred to Committee on \_\_\_\_\_



2009

20092225  
LS 7555/DI 107+

Introduced

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in this style type, and deletions will appear in this style type.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in this style type. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in this style type or this style type reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

## SENATE BILL

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 34-6-2-11.5 IS ADDED TO THE INDIANA CODE  
2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2009]: Sec. 11.5. "Asbestos claim", for purposes of IC 34-31-8,  
4 has the meaning set forth in IC 34-31-8-1.

5 SECTION 2. IC 34-6-2-29.5 IS ADDED TO THE INDIANA CODE  
6 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
7 1, 2009]: Sec. 29.5 "Corporation", for purposes of IC 34-31-8, has  
8 the meaning set forth in IC 34-31-8-2.

9 SECTION 3. IC 34-6-2-69.5 IS ADDED TO THE INDIANA CODE  
10 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
11 1, 2009]: Sec. 69.5. "Innocent successor corporation", for purposes  
12 of IC 34-31-8, has the meaning set forth in IC 34-31-8-3.

13 SECTION 4. IC 34-6-2-142.5 IS ADDED TO THE INDIANA  
14 CODE AS A NEW SECTION TO READ AS FOLLOWS  
15 [EFFECTIVE JULY 1, 2009]: Sec. 142.5. "Successor asbestos related  
16 liability", for purposes of IC 34-31-8, has the meaning set forth in  
17 IC 34-31-8-4.

2009

LS 7555/DI 107+



SECTION 5. IC 34-6-2-143.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 143.8. "Transferor corporation", for purposes of IC 34-31-8, has the meaning set forth in IC 34-31-8-5.

SECTION 6. IC 34-31-8 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

Chapter 8. Limited Liability Concerning Asbestos Related Claims

Sec. 1. As used in this chapter, "asbestos claim" means any claim for damages, losses, indemnification, contribution, or other relief concerning asbestos, including:

(1) a claim relating to the health effects of exposure to asbestos, including:

(A) personal injury;

(B) death;

(C) mental injury;

(D) emotional injury;

(E) risk of disease or other injury; or

(F) the costs of medical monitoring or surveillance;

(2) a claim made by or on behalf of any person exposed to asbestos, including a claim of a:

(A) representative;

(B) spouse;

(C) parent;

(D) child; or

(E) other relative;

of a person exposed to asbestos; and

(3) a claim for damage or loss caused by the:

(A) installation;

(B) presence; or

(C) removal of asbestos.

Sec. 2. As used in this chapter, "corporation" means a corporation for profit, including a domestic corporation organized under Indiana law or a foreign corporation organized under the law of a jurisdiction other than Indiana.

Sec. 3. (a) As used in this chapter, "innocent successor corporation" means a corporation that:

(1) assumes;

(2) incurs;

(3) has assumed; or



1 (4) has incurred;  
2 successor asbestos related liability and became a successor  
3 corporation due to a merger or consolidation with another  
4 corporation before January 1, 1972.

5 (b) The term includes a corporation into which an innocent  
6 successor corporation is at any time subsequently merged or  
7 consolidated.

8 Sec. 4. As used in this chapter, "successor asbestos related  
9 liability" means any liability that is related to an asbestos claim  
10 that was assumed or incurred by a corporation as a result of:

11 (1) a merger or consolidation with another corporation;

12 (2) the plan of merger or consolidation related to the merger  
13 or consolidation; or

14 (3) the exercise of control or the ownership of stock of the  
15 corporation before the merger or consolidation.

16 Sec. 5. As used in this chapter, "transferor corporation" means  
17 a corporation from which a successor asbestos related liability was  
18 assumed or incurred.

19 Sec. 6. This chapter shall be construed liberally regarding  
20 innocent successor corporations.

21 Sec. 7. This chapter applies to a civil action asserting an asbestos  
22 claim that is filed against an innocent successor corporation:

23 (1) after June 30, 2009; or

24 (2) before July 1, 2009, if trial has not commenced as of July  
25 1, 2009.

26 Sec. 8. (a) Subject to subsections (c) and (d) and sections 10 and  
27 12 of this chapter, the cumulative successor asbestos related  
28 liabilities of an innocent successor corporation are limited to the  
29 fair market value of the total gross assets of the transferor  
30 corporation, determined as of the time of the merger or  
31 consolidation through which the innocent successor corporation  
32 assumed or incurred successor asbestos related liability.

33 (b) An innocent successor corporation is not responsible for  
34 successor asbestos related liability in excess of the limitation set  
35 forth in subsection (a).

36 (c) For purposes of this section, if a transferor corporation  
37 assumed or incurred successor asbestos related liability in  
38 connection with a merger or consolidation with a prior transferor  
39 corporation, the fair market value of the total gross assets of the  
40 prior transferor corporation determined as of the time of the  
41 earlier merger or consolidation shall be substituted for the  
42 limitation set forth in subsection (a) to determine the limitation of



1 liability of the innocent successor corporation.

2 (d) Cumulative successor asbestos related liabilities include  
3 liabilities that exist after the merger or consolidation of the  
4 innocent successor corporation and the transferor corporation and  
5 that are paid or discharged by or on behalf of the:

6 (1) innocent successor corporation; or

7 (2) transferor corporation;

8 as part of a settlement or judgment in Indiana or another  
9 jurisdiction.

10 Sec. 9. The limitations set forth in section 8 of this chapter apply  
11 to the successor asbestos related liability of an innocent successor  
12 corporation and do not apply to:

13 (1) worker's compensation benefits paid by or on behalf of an  
14 employer to an employee under IC 22-3 or a comparable  
15 worker's compensation law in another jurisdiction;

16 (2) a claim against a corporation that is not a successor  
17 asbestos related liability;

18 (3) any obligation under the federal National Labor Relations  
19 Act (29 U.S.C. 151, et. seq.); or

20 (4) a collective bargaining agreement.

21 Sec. 10. (a) An innocent successor corporation may establish the  
22 fair market value of the total gross assets of a transferor  
23 corporation to determine limitations under section 8 of this chapter  
24 by any reasonable method, including:

25 (1) by reference to the going concern value of the assets;

26 (2) by reference to the purchase price attributable to or paid  
27 for assets in an arms length transaction; or

28 (3) in the absence of other readily available information from  
29 which the fair market value can be determined, by reference  
30 to the value of the assets recorded on a balance sheet.

31 Sec. 11. (a) If the total gross assets of a transferor corporation  
32 include liability insurance issued to the transferor corporation, this  
33 chapter does not affect the applicability, terms, conditions, or  
34 limits of the liability insurance.

35 (b) This chapter does not affect the rights and obligations of an  
36 insurer, transferor, or successor under an insurance contract or  
37 any related agreements, including:

38 (1) preenactment settlements resolving coverage related  
39 disputes; or

40 (2) contracts regarding the rights of an insurer to seek  
41 payment for applicable deductibles, retrospective premiums,  
42 self insured periods, or periods as to which insurance is





1 uncollectible or unavailable.

2 (c) A settlement of a dispute concerning liability insurance  
3 coverage entered into by a:

4 (1) transferor corporation; or

5 (2) successor corporation;

6 with the insurers of a transferor corporation before July 1, 2009,  
7 is determinative of the total coverage of liability insurance to be  
8 included in the calculation of a transferor corporation's total gross  
9 assets under this chapter.

10 Sec. 12. (a) Except as provided in subsections (b) through (d),  
11 the sum determined as the fair market value of the total gross  
12 assets of a transferor corporation as of the time of a merger or  
13 consolidation for purposes of determining the limit on the  
14 cumulative successor asbestos related liabilities of an innocent  
15 successor corporation under this chapter shall be adjusted  
16 annually at a rate equal to the sum of the following:

17 (1) The prime rate listed in the first edition of the Wall Street  
18 Journal published for each calendar year since the merger or  
19 consolidation. If the prime rate is not published in the first  
20 edition of the Wall Street Journal, then a reasonable  
21 determination of the prime rate on the first day of the year  
22 may be used.

23 (2) One percent (1%).

24 (b) The rate described in subsection (a) may not be  
25 compounded.

26 (c) The adjustment of the fair market value of the total gross  
27 assets of the transferor corporation as of the time of the merger or  
28 consolidation shall continue as described in subsection (a) until the  
29 date as of which the adjusted value is first exceeded by the  
30 cumulative amounts of successor asbestos related liabilities paid or  
31 committed to be paid by or on behalf of:

32 (1) the innocent successor corporation;

33 (2) any predecessor corporation; and

34 (3) the transferor corporation;

35 after the time of the merger or consolidation.

36 (d) No adjustment of the fair market value of total gross assets  
37 of a transferor corporation under this section shall be applied to  
38 any liability insurance.



**CROWN CORK & SEAL**Asbestos Liability Background - Indiana

SB479

634-4898

FAX

Crown Cork & Seal was founded in 1892 by the inventor of the bottle cap and is the world's leading manufacturer of consumer packaging products. Crown and its affiliated companies employ over 20,000 people and make one out of every five beverage cans in the world and one out of every three food cans used in North America and Europe. Crown also has over 15,000 retirees in the USA who rely on Crown for their pension checks and health care coverage.

Crown Cork & Seal -- although it never manufactured, sold, or installed a single asbestos-containing product -- has been named to an increasing number of asbestos related lawsuits in Indiana and other states, due to its very brief association with Mundet Cork Company.

These claims against Crown Cork & Seal arise from a stock interest the company obtained in 1963 in the Mundet Cork Company, a small family-owned manufacturer of cork-lined bottle caps. Before the acquisition, Mundet also had a small side business as a manufacturer of asbestos and other insulation products. By the time of Crown's stock purchase, however, Mundet had completely shut down its insulation manufacturing operations.

Within 93 days of Crown's obtaining its interest in Mundet, what was left of the Mundet insulation division -- idle machinery, leftover inventory, and customer lists -- was sold to a New Jersey insulation company. Two years later, in 1966, Mundet, now having only the bottle-cap operation that Crown sought to acquire, was merged into Crown.

Although Crown never manufactured, sold or installed a single asbestos product, claimants have enjoyed an enormous windfall, with more than 300,000 claims against Crown, costing the company hundreds of millions of dollars. In fact, Crown's initial investment of \$7 million in Mundet nearly 40 years ago has resulted in more than \$600 million in asbestos-related payments by Crown through the end of last year.

While some claim Crown should have exercised greater due diligence before it became involved with Mundet, it was not until 1972 that OSHA established its first regulations covering asbestos, a material that up to that time was widely used as the world's best insulation material. In addition, it was not until the mid-1970s that personal injury lawsuits began to be filed in connection with asbestos.

Because many companies that actually were involved with asbestos have been forced into bankruptcy under the weight of asbestos litigation, Crown has found itself a target and sued in an increasing number of joint-and several-liability claims.

With Crown at great risk of bankruptcy under the weight of these lawsuits, the legislatures of Pennsylvania, Texas, Mississippi, Ohio, Florida, Georgia and South Carolina have responded to enact bipartisan legislation limiting successor's asbestos liabilities under circumstances like these. In so doing, a cap on such liability equal to the inflation adjusted gross asset value of the predecessor asbestos-tainted company has been established.

On a state level, Crown operates a large manufacturing facility in Crawfordsville, Indiana. It employs approximately 100 people. There are almost 650 retirees in the State who rely on Crown pension checks and its health and dental benefits. Crown and its employees pay several million dollars in various taxes in the state.

Enactment of the proposed legislation in Indiana will help Crown to obtaining refinancing, avoid bankruptcy and, thus, assure the preservation of jobs in the USA and in the state of Indiana.

NOTES

EXHIBIT

12

**ASBESTOS**

---

**MEDICAL  
AND  
LEGAL ASPECTS**

**FIFTH EDITION**

*Exhibit 12  
also given  
to Senator*

BY  
**BARRY I. CASTLEMAN**

WITH A CONTRIBUTION BY  
**STEPHEN L. BERGER**

**ASPEN**  
PUBLISHERS

1185 Avenue of the Americas, New York, NY 10036  
[www.aspenpublishers.com](http://www.aspenpublishers.com)

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—From a *Declaration of Principles* jointly adopted  
by a committee of the American Bar Association  
and a Committee of Publishers and Associations

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Printed in the United States of America

1 2 3 4 5 6 7 8 9 0

**Library of Congress Cataloging-in-Publication Data**

Castleman, Barry I.

Asbestos : medical and legal aspects / by Barry I. Castleman with a  
contribution by Stephen L. Berger.— 5th ed.  
p. cm.

Includes bibliographical references and indexes.

ISBN 0-7355-5260-6 (hardcover)

1. Asbestosis. 2. Asbestos—Toxicology. 3. Asbestos industry—  
Health aspects. 4. Asbestos—Law and legislation—United States. I.  
Title.

RC775.A8C38 2004  
363.17'91—dc22

2004024408

Table 3. Armstrong Cork Company Workers' Compensation Claims in Insulation Workers (cont.)

Claimant	Date of Notice	Where Filed	Other Asbestos Manufacturer Defendants	Outcome	Comment
Cuthbertson, Jack	11-15-54	California Industrial Accident Commission (S.F.)	Plant Rubber and Asbestos Works (Fibreboard) and Mundet Cord dismissed as defendants		
Campbell, Edward	12-16-54	Workmen's Compensation Commission of Connecticut (Hartford)	Johns-Manville, Mundet Cork	compromise settlement \$6,000/asbestosis (12-20-55)	4-11-60 note from lawyer for J-M and Armstrong claimed he had not been employed doing asbestos insulation in the state of California by either firm.
Swartout, John	12-28-55	California I.A.C. (S.F.)	Johns-Manville, Mundet Cork, Philip Carey	1958 award of compensation for asbestosis, terminating in fatal cor pulmonale	
McCarrell, Ervey	12-10-56	California I.A.C. (L.A.)	Johns-Manville, Owens-Corning and Fibreboard joined as defendants (4-23-59)	compromise settlement \$13,500 (1-14-60) asbestosis	

Table 3. Armstrong Cork Company Workers' Compensation Claims in Insulation Workers (cont.)

Claimant	Date of Notice	Where Filed	Other Asbestos		Outcome	Comment
			Manufacturer	Defendants		
Dean, William (widow, Mary)	9-19-60	New York Workmen's Compensation Board	Mundet Cork	*	settled (asbestosis) *	2-10-61 letter Schiedt to Hoff: "Our file indicates William Dean's death, December 6, 1959, was caused by asbestosis."
Harding, Clifford	1-12-61	California I.A.C. (S.F.)	Owens-Corning		settled for \$3,300 in addition to sums paid previously (asbestosis)	--
Gronenthal, John	8-16-61	State of Washington Board of Industrial Insurance Appeals	Owens-Corning		"status unknown" asbestosis/lung cancer	appellate order attributed asbestosis, lung cancer, and death for cor pulmonale to insulation dust exposure (11-30-62)
Gillivich, Steve	11-29-61 (Mundet Cork, Fibreboard)	California I.A.C. (Oakland)	Philip Carey, Owens-Corning (and Armstrong)	joined as defendants 8-29-62	settled \$7,968 (asbestosis) 12-22-64	--

Table 3. Armstrong Cork Company Workers' Compensation Claims in Insulation Workers (cont.)

Claimant	Date of Notice	Where Filed	Other Asbestos Manufacturer Defendants	Outcome	Comment
Wyss, John	1-10-62 *	California I.A.C. (Oakland)	Owens-Corning, Mundet Cork, Fibreboard *	\$6,500 settlement (asbestosis) 1966 *	—
Miller, Arthur	2-21-62	California I.A.C. (L.A.)	Fibreboard, Mundet Cork *	"dismissed" (asbestosis)	—
Greischar, Paul	4-24-62	California I.A.C. (Oakland)	Fibreboard, Owens-Corning joined as defendants (8-23-63)	settled \$8,735 in addition to sums paid previously (asbestosis) 4-5-66	—
Staples, John	5-17-62 *	California I.A.C. (Long Beach) *	Owens-Corning, Mundet Cork *	settlement \$9,250 (asbestosis) 2-1-63 *	partial disability at age 37
Onofrio, Anthony	6-25-52	Connecticut Workers' Compensation Commission (New Haven)	Philip Carey, Johns-Manville	settlement or comp. awarded	
Brodale, Frederick (widow, Irene)	7-13-62	California I.A.C. (Oakland)	—	settled \$1,500 (lung cancer)	Cremation prevented pathological verification

Table 3. Armstrong Cork Company Workers' Compensation Claims in Insulation Workers (cont.)

Claimant	Date of Notice	Where Filed	Other Asbestos Manufacturer Defendants	Outcome	Comment
Kingston, George	10-16-62	Minnesota Industrial Commission	—	settled \$13,500 (asbestosis) 3-27-63	—
Brokenshire, Leonard	3-15-63 *	California I.A.C. (Los Angeles)	Owens-Corning, *	award for \$13,000 (asbestosis) 11-6-63 *	—
Novak, Edward	3-27-63	California I.A.C. (L.A.)	Mundet Cork *	settled \$5,500 (asbestosis) 8-18-66	—
Faulkner, John	4-9-63	California I.A.C. (Long Beach)	Fibreboard (11-15-65)	settled	—
Goans, Robert	8-8-63 *	California I.A.C. (Oakland)	Fibreboard, *	settled \$6,750 (asbestosis) 8-3-64 *	—
Wines, Bernard	1963	Michigan Workmen's Compensation Department	Mundet Cork, * Johns-Manville, Owens-Corning	—	—



Barry Castleman's Insulators' Workers Comp Files

CD-ROM Document # IWC 45

CLAIM DATE 1/53

CLAIMANT: Swartout

Contains all documents found in the claimant's file,  
with 1 blank page between each separate document.

Note ALL of these originals were 8.5x14"

COMMISSION OFFICES:  
FOR NORTHERN CALIFORNIA  
(EXCEPT SACRAMENTO COUNTY)  
965 MISSION STREET  
SAN FRANCISCO 3

FOR SACRAMENTO COUNTY ONLY  
ROOM 200, 631 J STREET  
SACRAMENTO

FOR SOUTHERN CALIFORNIA  
(EXCEPT SAN DIEGO COUNTY)  
801 STATE BUILDING  
LOS ANGELES 12

FOR SAN DIEGO COUNTY ONLY  
1521 FOURTH AVENUE  
SAN DIEGO 1

STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
INDUSTRIAL ACCIDENT COMMISSION

DO NOT WRITE IN  
THIS SPACE

APPLICATION FOR HEARING

Case No. 568F 169-171  
Filed: 12-30-55

ENTERED IN DOCKET  
BY \_\_\_\_\_

Employee's Name John E. Swartout

Social Security No. 472-10-9896

Name of Employer Various

Name of Insurance Carrier See attached list

Employee's Address 3000 Marrywood Drive  
STREET AND NUMBER  
Sacramento 17, California

TOWN OR CITY ZONE STATE  
Employer's Address California Compaines  
STREET AND NUMBER

TOWN OR CITY ZONE STATE  
Insurance Carrier's Address \_\_\_\_\_  
STREET AND NUMBER

CITY ZONE STATE

Employee's name John E. Swartout

Employee's date of birth September 5, 1889

Date of your injury Exposure over a long period  
1 of time  
Place where injury occurred California  
CITY AND STATE

Employee's occupation ASBESTOS Insulation  
at time of injury

When did you leave work as a result of this injury? January 6, 1955

How did injury occur? Working with asbestos

What part or parts of your body were injured? Asbestosis

When did you return to work? Still off

Full or part time work and at what wage? \_\_\_\_\_

Your wages or salary (before deductions) \$ \_\_\_\_\_ per hour or 3.15 per week or \$ \_\_\_\_\_ per month

If paid on hourly rate, how many hours did you work per week? 40 hour week, plus overtime sometimes

Did you receive any of the following: Board? Yes ☒ No ☐; Lodging? Yes ☐ No ☐; Tips? Yes ☐ No ☒; Other advantages? Yes ☐ No ☐  
State their weekly value \$ \_\_\_\_\_ (Only on some jobs)

Have you been paid any compensation? Yes ☒ No ☐. How much \$ 910.00 Weekly rate of payments \$ 35.00  
TOTAL AMOUNT

Date when last payment was made Up to Sept. 13, 1955

Has the employer or the insurance carrier furnished you with any medical treatment? Yes ☐ No ☐.

Date when last treatment was given \_\_\_\_\_, 19\_\_\_\_

List names of all doctors who have treated you and who were furnished by the employer or insurance carrier \_\_\_\_\_

Have you obtained any medical treatment at your own expense? Yes ☒ No ☐.

List names of all doctors who have treated you at your own expense Dr. Fortier with Clinic at Springvale Hospital; Dr. Webster, Sacramento Hospital; Dr. Allan Moo, Sacto,

Are you claiming any of the following benefits? (Answer Yes or No):

(a) Temporary disability payment Yes (b) Permanent disability payment Yes  
(c) Further medical treatment Yes (d) Cost of your medical expense Yes  
(e) List other benefits claimed and not mentioned above \_\_\_\_\_

Have you ever before filed a claim with this Commission? Yes ☐ No ☐. If so, when was it filed? \_\_\_\_\_ DATE

ON OFFICES:  
SOUTHERN CALIFORNIA  
(SACRAMENTO COUNTY)  
MISSION STREET  
SAN FRANCISCO 3  
SACRAMENTO COUNTY ONLY  
ROOM 200, 631 J STREET  
SACRAMENTO  
FOR SOUTHERN CALIFORNIA  
(EXCEPT SAN DIEGO COUNTY)  
501 STATE BUILDING  
LOS ANGELES 12  
FOR SAN DIEGO COUNTY ONLY  
1521 FOURTH AVENUE  
SAN DIEGO 1

STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
INDUSTRIAL ACCIDENT COMMISSION

DO NOT WRITE IN  
THIS SPACE

APPLICATION FOR HEARING  
DEATH CLAIM

Case No. 169-171  
Filed: 6-13-56

ENTERED IN DOCKET  
BY \_\_\_\_\_

Names of Applicants:

Mrs. John E. Swartout

Addresses of Applicants:

3000 Merrywood Drive

Sacramento 21, California

Name of Employer: Listed on separate sheet  
as filed December 28, 1955

Address of Employer: \_\_\_\_\_

Name of Insurance Carrier: See attached list as  
per December 28, 1955

Address of Insurance Carrier: \_\_\_\_\_

Name of Deceased Employee: John E. Swartout

Date of Employee's Birth September 5, 1889

Date of employee's injury \_\_\_\_\_

Date of employee's death May 30, 1956

Employee's occupation? Asbestos worker

Place where injury occurred: Various jobs

What work was employee doing at time of injury? Asbestos insulation work

Was any medical or hospital expense involved? Yes ☒ No ☐ Amount paid \$ \_\_\_\_\_

Who paid it? \_\_\_\_\_

Was any compensation paid to the employee after his injury? Yes ☐ No ☒ If so, how much \$ \_\_\_\_\_

List names of all doctors who treated the employee after his injury Dr. W.B. Parkinson, Porterville, Calif  
Clinic of doctors (Specialists on lungs) at Springville, Calif. Dr. C. Weh

Has burial expense been paid? Yes ☐ No ☐ If so, how much \$ Dr. Robert M. Harris; Dr. Allan Moe

List all those who claim to have been dependents of the employee at time of injury

NAME	AGE (IF UNDER 21)	RELATIONSHIP TO THE EMPLOYEE	ADDRESS
<u>Mrs. John E. Swartout</u>		<u>Wife</u>	<u>3000 Merrywood Drive</u> <u>Sacramento 21, Calif</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

IMPORTANT—If any applicant is under 21 years of age, it will be necessary to file Petition for Appointment of Guardian ad Litem  
Forms for this purpose may be obtained at the offices of the Industrial Accident Commission.

1 BEFORE THE INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF  
2 CALIFORNIA

3 CLAIM NO. 55 SF 169-171

4  
5 JOHN E. SWARTOUT,

6 Applicant,

7 vs.

8 MUNDET CORK CORP.; HARRY A. DUTTON, INC.;  
9 DUTTON ASBESTOS CO.; DUTTON ASBESTOS &  
10 SUPPLY CO.; WESTERN ASBESTOS CO.; BAY CITY  
11 ASBESTOS CO., Ltd.; CORK INSULATION CO.,  
12 Inc.; WESTERN FIBROUS GLASS PRODUCTS CO.;  
13 GENERAL INSULATION & RUBBER CORPORATION;  
14 ARMSTRONG CORK CO.; JOHNS MANVILLE SALES  
15 CORPORATION; C. C. MOORE & CO.; J. T.  
16 THORPE & SON, INC.; M. R. CARPENTER,  
17 AETNA INSURANCE COMPANY; STATE COMPENSA-  
18 TION INSURANCE FUND; INDUSTRIAL INDEMNITY  
19 EXCHANGE; INDUSTRIAL INDEMNITY COM-  
20 PANY; PACIFIC INDEMNITY COMPANY; LIBERTY  
21 MUTUAL INSURANCE COMPANY; EMPLOYERS MUTUAL  
22 INSURANCE COMPANY; TRAVELERS INSURANCE COM-  
23 PANY; STANDARD ACCIDENT INSURANCE COMPANY,  
24 and PACIFIC EMPLOYERS INSURANCE COMPANY,

25 Defendants.

ORDER JOINING  
PARTIES  
DEFENDANT

Mailed from San Francisco Office

JUN 22 1956

Industrial Accident Commission  
State of California

26 GOOD CAUSE APPEARING THEREFOR:

27 IT IS ORDERED that the Mundet Cork Corp., Harry  
A. Dutton, Inc.; Dutton Asbestos Co., Dutton Asbestos & Supply  
Co., Western Asbestos Co., Bay City Asbestos Co., Ltd.; Cork  
Insulation Co., Inc.; Western Fibrous Glass Products Co.,  
General Insulation & Rubber Corporation, Armstrong Cork Co.,  
Johns Manville Sales Corporation, C. C. Moore and Co, J. T.  
Thorpe & Son, Inc.; M. R. Carpenter, Aetna Insurance Company,  
State Compensation Insurance Fund, Industrial Indemnity Ex-  
change, Industrial Indemnity Company, Pacific Indemnity Company,  
Liberty Mutual Insurance Company, Employers Mutual Insurance  
Company, Travelers Insurance Company, Standard Accident In-  
surance Company and Pacific Employers Insurance Company, be  
and they are hereby joined as parties defendant.

*let Rt*

TOENSMEIER ADJUSTMENT SERVICE, INC.  
INSURANCE ADJUSTERS

*9/5/58*

CHARLES J. COPE  
ADJUSTER

LANCASTER, PENNA. OFFICE  
39 N. DUKE STREET

BEFORE THE INDUSTRIAL ACCIDENT COMMISSION  
OF THE STATE OF CALIFORNIA

CASE NO. 169-171

*John E* / *1-10-55*  
BERGIT A. SWARTOUT,

Applicant

v.

MUNDET CORK CORP., HARRY A. DUTTON,  
INC., DUTTON ASBESTOS CO., DUTTON  
ASBESTOS & SUPPLY CO., WESTERN  
ASBESTOS CO., BAY CITY ASBESTOS CO.,  
LTD., CORK INSULATION CO., INC.,  
WESTERN FIBER GLASS COMPANY, GENERAL  
INSULATION & RUBBER CORPORATION,  
ARMSTRONG CORK CO., JOHNS MANVILLE  
SALES CORPORATION, C. C. MOORE & CO.,  
J. T. THORPE & SON, INC., M. R.  
CARPENTER, AETNA INSURANCE COMPANY,  
STATE COMPENSATION INSURANCE FUND,  
INDUSTRIAL INDEMNITY EXCHANGE,  
INDUSTRIAL INDEMNITY COMPANY, LIBERTY  
MUTUAL INSURANCE COMPANY, TRAVELERS  
INSURANCE COMPANY, STANDARD ACCIDENT  
INSURANCE COMPANY and PACIFIC EMPLOYERS  
INSURANCE COMPANY,

Defendants

DECISION  
AFTER RECONSIDERATION

*Noted from San Francisco office  
Industrial Accident Commission  
State of California*

Reconsideration having been granted herein and, the  
matter having been carefully considered, including transcripts  
of the testimony, as well as the record as a whole, this Commis-  
sion now concludes that further proceedings are not essential  
for the disposition of the claim and makes its Decision after  
Reconsideration as follows:

FINDINGS OF FACT

1. John E. Swartout, while employed as an asbestos worker in the County of San Francisco, State of California, on January 10, 1955, by Western Asbestos Company, sustained an injury arising out of and occurring in the course of his employment, consisting of substantial and material exposure to asbestosis. At said time, the employee's wages were maximum.

2. There may have been like exposure in other employments both within and without the State of California.

3. Applicant has elected to proceed against the Western Asbestos Company and its insurance carrier, the State Compensation Insurance Fund, pursuant to Labor Code Section 5500.5.

4. Said injury resulted in temporary total disability beginning on January 11, 1955, continuing to and including June 5, 1956, entitling the employee to temporary total disability indemnity at the rate of \$35 a week in the total sum of \$2,555.

5. The evidence establishes that said employee failed to give defendants notice of his need for medical treatment to cure or relieve him from the effects of said injury.

6. The employee died on June 6, 1956, and the evidence establishes that said death was proximately caused by the injury herein.

7. The application for adjustment of claim was filed herein within one year from the date of said injury.

8. The evidence fails to establish that defendants or any of them have been prejudiced by lack of notice of the claim asserted herein.

1 : examination and report by Dr. Allan E. Moe required to success-  
2 : fully prove his case.

3 : 12. Applicant's counsel, Smith & Parrish, have performed  
4 : services of the reasonable value of \$600.

5 : A W A R D

6 : AWARD IS MADE in favor of Bergit A. Swartout and against  
7 : the State Compensation Insurance Fund of accrued temporary disa-  
8 : bility indemnity commencing January 11, 1955, to and including  
9 : June 5, 1956, at the rate of \$35 a week in the total sum of  
10 : \$2,555, payable forthwith.

11 : AWARD IS FURTHER MADE in favor of Bergit A. Swartout and  
12 : against the State Compensation Insurance Fund of a death benefit  
13 : in the amount of \$7,000, payable at the rate of \$35 a week begin-  
14 : ning June 6, 1956, less \$600 payable to Smith & Parrish as  
15 : attorneys' fee.

16 : AWARD IS FURTHER MADE in favor of Bergit A. Swartout and  
17 : against the State Compensation Insurance Fund for burial expense  
18 : in the amount of \$400.

19 : AWARD IS FURTHER MADE in favor of Bergit A. Swartout and  
20 : against the State Compensation Insurance Fund of the sum of \$35  
21 : for medical litigation costs, payable to Dr. Allan E. Moe,

22 : IT IS ORDERED that all payments herein shall bear interest  
23 : as provided by Labor Code Section 5800.

24 :  
25 : INDUSTRIAL ACCIDENT COMMISSION  
26 : OF THE STATE OF CALIFORNIA

F.A. Lawrence

BERGIT A. SWARTOUT

v. MUNDET CORK CORP., HARRY A. DUTTON, INC., DUTTON ASBESTOS CO., DUTTON ASBESTOS & SUPPLY CO., WESTERN ASBESTOS CO., BAY CITY ASBESTOS CO., LTD., CORK INSULATION CO., INC., WESTERN FIBER GLASS COMPANY, GENERAL INSULATION & RUBBER CORPORATION, ARMSTRONG CORK CO., JOHNS MANVILLE SALES CORPORATION, C. C. MOORE & CO., J. T. THORPE & SON, INC., M. R. CARPENTER, AETNA INSURANCE COMPANY, STATE COMPENSATION INSURANCE FUND, INDUSTRIAL INDEMNITY EXCHANGE, INDUSTRIAL INDEMNITY COMPANY, LIBERTY MUTUAL INSURANCE COMPANY, TRAVELERS INSURANCE COMPANY, STANDARD ACCIDENT INSURANCE COMPANY and PACIFIC EMPLOYERS INSURANCE COMPANY

June 6, 1958

Case No. 169-171

REPORT OF PANEL ONE ON  
DECISION AFTER RECONSIDERATION

The record reflects that decedent, while employed as an asbestos worker on January 10, 1955 by Western Asbestos Company sustained an injury arising out of and occurring in the course of his employment, consisting of substantial and material exposure to asbestosis. The record further reflects that there may have been like exposures in other employments both within and without the State of California.

The injury caused total temporary disability from January 11, 1955 through June 5, 1956. Employee's death on June 6, 1956 was proximately caused by the injury herein, entitling applicant to death benefits.

It appears from the evidence that decedent failed to give notice to defendants of his need for medical treatment.

Applicant is entitled to the statutory burial expense and to medico-legal expense of \$35, payable to Dr. Moe.

Applicant's attorneys have rendered services herein of the reasonable value of \$600.

It is the opinion of the Panel that the claim is not barred by the statute of limitations and that the evidence fails to establish that defendants have been prejudiced by lack of notice of the claim asserted herein.

Decision after Reconsideration should issue accordingly.



JUL 2 1958

1 BEFORE THE INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA

2 CLAIM NO. 162-171

3  
4  
5 **BERGIT A. SWARTOUT,**

6 **Applicant**

7 **vs.**

8 **MUMFET CORK CORP., HARRY A. DUTTON,**  
9 **INC., DUTTON ASBESTOS CO., DUTTON**  
10 **ASBESTOS & SUPPLY CO., WESTERN**  
11 **ASBESTOS CO., BAY CITY ASBESTOS CO.,**  
12 **LTD., CORK INSULATION CO., INC.,**  
13 **WESTERN FIBER GLASS COMPANY, GENERAL**  
14 **INSULATION & RUBBER CORPORATION,**  
15 **ARMSTRONG CORK CO., JOHNS MANVILLE**  
16 **SALES CORPORATION, C. C. MOORE & CO.,**  
17 **J. T. THORPE & SON, INC., M. R.**  
18 **CARPENTER, AETNA INSURANCE COMPANY,**  
19 **STATE COMPENSATION INSURANCE FUND,**  
20 **INDUSTRIAL INDEMNITY EXCHANGE,**  
21 **INDUSTRIAL INDEMNITY COMPANY, LIBERTY**  
22 **MUTUAL INSURANCE COMPANY, TRAVELERS**  
23 **INSURANCE COMPANY, STANDARD ACCIDENT**  
24 **INSURANCE COMPANY and PACIFIC EMPLOYERS**  
25 **INSURANCE COMPANY,**

26 **Defendants.**

**PETITION FOR**  
**REAPPORTIONMENT OF**  
**OCCUPATIONAL DISEASE**  
**AWARD AND CONTRIBUTION**  
**AMONG PARTIES DEFENDANT**

27  
28 **Comes now the WESTERN ASBESTOS COMPANY and STATE**  
29 **COMPENSATION INSURANCE FUND, defendants herein, with their Petition**  
30 **for Reapportionment of Occupational Award and Contribution Among**  
31 **Parties Defendant and in this connection respectfully allege that:**

32 **1. On June 10th, 1958 decision after reconsideration**  
33 **was issued by this honorable Commission awarding certain temporary**  
34 **disability indemnity benefits and death benefits against the State**  
35 **Compensation Insurance Fund in favor of Bergit A. Swartout,**  
36 **applicant herein.**

1  
2  
3 certain payments.

4 4. In addition this Commission found that there "may  
5 have been like exposure in other employments both within and  
6 without the State of California" (decision after reconsideration  
7 filed June 10th, 1958).

8 5. This Commission further found that the applicant  
9 has "elected to proceed against the Western Asbestos Company  
10 and its insurance carrier, the State Compensation Insurance Fund  
11 pursuant to Labor Code Section 5500.5" (decision after  
12 reconsideration filed June 10th, 1958).

13 6. The various employers of John E. Swartout during his  
14 exposure to asbestosis have heretofore been joined as parties  
15 defendant herein and should now be required to contribute their  
16 just portion of the liability assessed against your petitioner on  
17 account of the industrially caused injury and subsequent death  
18 suffered by John E. Swartout.

19 WHEREFORE, it is respectfully requested that pursuant to  
20 the provisions of Labor Code 5500.5 further proceedings be now  
21 ordered against the above named defendants for the purpose of  
22 determining an apportionment of liability among the parties defon  
23 previously joined or right of contribution at which proceeding al  
24 of the above named defendants be ordered to appear and defend.

25 Copies of this petition have been mailed on the date  
26 hereof to the parties listed on next page.

27 Respectfully submitted,

- 1 c - Bergit A. Smartout  
2 3015 Arden Way  
Sacramento, California
- 3 c - Smith & Parriah  
4 Attorneys at Law  
Financial Center Bldg.  
Oakland 12, California
- 5 c - Mundet Cork Corp.  
6 7101 Tommelle Ave.  
North Bergen, New Jersey
- 7 c - Dutton Asbestos & Supply Co.  
8 532 Natoma St.  
San Francisco, California
- 9 c - Western Asbestos Co.  
10 672 Tommelle St.  
San Francisco, California
- 11 c - Bay City Asbestos Co.  
12 251 - 5th Avenue  
Oakland, California
- 13 c - Cork Insulation Co., Inc.  
14 730 - 5th Avenue  
New York, N.Y.
- 15 c - Western Fiber Glass Co.  
16 739 Bryant St.  
San Francisco, California
- 17 c - General Insulation & Rubber Corp.  
18 1247 Main Street  
El Centro, California
- 19 c - Armstrong Cork Co.,  
20 Lancaster, Pennsylvania
- 21 c - Johns Manville Sales Corp.  
22 22, East 40th Street  
New York, N.Y.
- 23 c - C. C. Moore & Co.  
24 450 Mission Street  
San Francisco, California
- 25 c - J. T. Thorpe & Son, Inc.  
26 1351 Ocean Avenue  
Emeryville, California
- 27 c - H. R. Carpenter  
28 907 Front Street  
Sacramento, California
- 29 c - Aetna Insurance Company  
30 220 Montgomery Street  
San Francisco, California
- 31 c - Industrial Indemnity Exchange  
32 155 Sansome Street  
San Francisco, California
- 33 c - Industrial Indemnity Co.  
34 350 Sansome Street  
San Francisco, California
- 35 c - Liberty Mutual Insurance Co.

Barry Castleman's Insulators' Workers Comp Files  
CD-ROM Document # IWC 12 CLAIM DATE 1959

CLAIMANT: DEAN

Contains all documents found in the claimant's file,  
with 1 blank page between each separate document.

**EMPLOYER****3**

STATE OF NEW YORK

**WORKMEN'S COMPENSATION BOARD**

50 PARK PLACE, NEW YORK 7, N. Y.

05522373 Dis.Ctd.

06008650 Dth.

05981605 Dis.Ctd.

William Dean

2/7/55

DEC 2 1960 WLN

W. C. B. CASE NO.

43

DATE OF ACCIDENT

3C 342 37 CB

CARRIER CODE

CARRIER CASE NO.

CLAIMANT **Mary Dean**ADDRESS **61-07 Woodside Avenue  
Woodside N.Y.**— EMPLOYER **Ventura Asbestos Co.**ADDRESS **27-16 40th Ave. L.I.C., N.Y.**CARRIER **Lumbermens Mut. Ins. Co.  
342 Madison Ave. N.Y.C.**ADDRESS **Spec. Funds Com. Comm.  
200 East 42nd St. N.Y.C.****A. Markhoff, Esq.****401 Broadway N.Y.C.****Mund & Cork Corp.****7101 Tonnell Ave.****No. Bergen, N.Y.**

Carrier is contending, through report filed with the Board and copy sent to the claimant, either that it is not required to make payments in this case, or that its obligation is less than the amount being claimed. In order to set a date for Trial Hearing on any issues that remain unsettled, a Preliminary Hearing will be held at the time and place above stated.

Both claimant and carrier are to be present, prepared to furnish in full detail all of the following information:

1. Nature of the disputed issues and of the evidence that will be produced at Trial Hearing.
2. Names and addresses or other identification of all witnesses on whose testimony the parties will rely for proofs, including both physicians and lay witnesses, and brief statement of evidence each is expected to give.
3. A day and hour when all witnesses and the parties can attend for Trial Hearing.
4. The time each party will require to present testimony and to cross-examine witnesses of the opposing party.

At the Preliminary Hearing the Referee will make findings on all issues not in dispute, or as to which dispute is withdrawn, and will then fix a day and hour for Trial Hearing and estimate the time to be allowed for taking all testimony.

ON THE DATE SET FOR TRIAL HEARING, THE CASE WILL BE DECIDED ON THE EVIDENCE PRESENTED. THERE WILL BE NO FURTHER ADJOURNMENT EXCEPT FOR GOOD AND SUFFICIENT CAUSE STATED UNDER OATH BY THE PARTY WHO HAS FURTHER EVIDENCE TO PRODUCE.

**NOTICE OF  
PRELIMINARY HEARING**

PLACE: 50 PARK PLACE, NEW YORK, N. Y.

DATE: **Dec. 14, 1960**TIME: **11:30 A.M.** —PART: **30**

Date of This Notice

**11/30/60 AMR****Armstrong Cork Co.  
295 Fifth Avenue N.Y.C.  
Balish Co.  
L.I.C., N.Y.**

*Solomon E. Senior*  
Chairman

## WORKMEN'S COMPENSATION BOARD

05527373 Dis. Cl.  
06003650 Dis. Cl.  
07981605 Dis. Cl.

50 PARK PLACE, NEW YORK 7, N. Y.

William Dean

2/7/55

W. C. B. CASE NO.

DATE OF ACCIDENT

3/2 3/2 37 00

IMPORTANT

CARRIER CODE

CARRIER CASE NO.

CLAIMANT

Mary Dean

(FIRST NAME)

(LAST NAME)

ADDRESS

61-07 Woodside Avenue

Woodside, N.Y.

EMPLOYER

Venture Asbestos Co.

ADDRESS

27-16 10th Ave., L.I.C., N.Y.

Lumbermen's Mut. Ins. Co.

342 Madison Ave., N.Y.C.

Spec. Funds Comm. Comm.

200 East 42nd St., N.Y.C.

A. Markhoff, Esq.

401 Broadway, N.Y.C.

Hudson Cork Corp.

7101 Tappan Ave.

No. Bergen, N.J.

Armstrong Cork Co.

295 Fifth Avenue, N.Y.C.

## NOTICE OF HEARING

PLACE: 50 PARK PLACE, NEW YORK, N. Y.

DATE: Sept. 25, 1960

TIME: 11:00 A.M. PART 30

CLAIMANT AND CARRIER SHOULD BE PRESENT  
HEARING AND PRODUCE NECESSARY EVIDENCE  
INDICATED BELOW, OTHERWISE, THE REFEREE A  
CLOSE CASE ON EVIDENCE IN FILE.

Note: Only items indicated by an "X" below  
apply to this hearing.

Relish Co.

L.I.C., N.Y.C.

## PURPOSE OF HEARING

TO HEAR TESTIMONY ON:

TO HAVE CLAIMANT EXAMINED BY STATE PHYSICIAN FOR

☐ Period and extent of disability.☐ Disability.☐ Accident — Notice to employer.  
Causal relationship of accident to injury.☐ Facial disfigurement.☐ Rate of compensation.☐ Final Adjustment.☐ Loss of earnings.☐ Operation or Treatment.☐ Further consideration.☐ DISABILITY CLAIM

BY CLAIMANT:

## EVIDENCE TO BE PRODUCED

☐ Latest medical report from own physician.☐ Record of earnings since accident.

BY EMPLOYER OR CARRIER:

☐ Medical reports.☐ C-4 (Final medical report).☐ X-Rays.☐ C-11 (Notice of injured person's return to work)

H. E. ...

FILE

September 27, 1960

Armstrong Contracting and Supply Corporation  
Workmen's Compensation Claim  
William Dean

---

The attached Notice of Hearing was received in this office late in the afternoon of September 26. The hearing was scheduled for 11:00 AM on September 28 at the Workmen's Compensation Board, 50 Park Place, New York City. From the information available on the notice, it was almost impossible to determine whether the hearing concerned determination of disability under the Workmen's Compensation Law or under the State Disability Benefits Law. The date of the accident shown was February 7, 1955, but our records failed to show any accident to a William Dean. Payroll reported the employment of a William D. Dean working out of the Atlanta Office in 1947. It seemed improbable that this employee was the one in question. Payroll also reported a W. Dean employed in New York State between June 15 and October 2, 1959. In view of the date of accident, it seemed improbable that this individual could be the one in question. Being unable to identify this accident in any respect, I called the Workmen's Compensation Board and requested information on it. After identifying myself at least six times, I finally talked to the individual responsible for this particular case. I was advised that William Dean died on December 6, 1959 and the date of February 7, 1955 was the date officially designated by the Board as the date for commencement of disability. The deceased died of Asbestosis. It was at the hearing held in September, 1959 that the referee directed that Armstrong Cork Company and two others be brought into any further proceedings on the case. Why we did not receive a copy of this directive I do not know. The individual I conferred with at the Board was able to furnish me with the social security number of the deceased, and we were thus able to identify him as being employed by AC&S from June 15 to October 2, 1959. The social security number of the deceased is 097-03-2801. Since the hearing to be held on September 28 involved apportionment to prior employers, it was essential that AC&S be represented.

Payroll furnished us with the dates of employment, gross earnings, and total hours worked by contract number for William Dean. These contracts were then identified as to customer, job, and type of work performed. In each instance, the deceased worked as an asbestos worker. One of the contracts, 231955 was excluded from The Travelers' Workmen's Compensation Policy since this insurance was provided by the customer. The customer, however, placed the insurance with The Travelers so The Travelers is concerned with all four contracts. The employment record of William Dean is attached.

Since The Travelers was not listed as receiving a copy of the Notice of Hearing, I called the New York Office of The Travelers to inquire if they had received any official notification. The gentleman I talked to was a Mr. R. Eckberg of the Workmen's Compensation Claims Section, and although he personally did not have access to their file on this claim, he knew that the individual responsible intended to appear at the hearing in our behalf. This being the case, he said it was unnecessary to send a copy of the Notice of Hearing or the individual's employment record at this time.

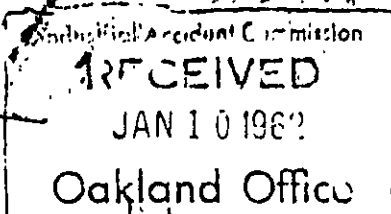
  
Wallace B. Hofferth

Barry Castleman's Insulators' Workers Comp Files  
CD-ROM Document # IWC 4 CLAIM DATE 1962

CLAIMANT: Wyss

Contains all documents found in the claimant's file,  
with 1 blank page between each separate document.





STATE OF CALIFORNIA  
INDUSTRIAL ACCIDENT COMMISSION



**APPLICATION**

FILE SIGNED ORIGINAL AND SIX COPIES  
(PLEASE PRINT OR TYPE NAMES AND ADDRESSES)

CASE NO. 59 OAK 7422

JOHN WYSS  
APPLICANT

507 Capp Street  
APPLICANT'S ADDRESS  
San Francisco, California

VS.

Social Security No. 558-01-3502

Mundet Cork Co.  
EMPLOYER

440 Brannan Street  
EMPLOYER'S ADDRESS  
San Francisco, California

and many others  
Aetna Casualty & Surety Co.  
EMPLOYER'S INSURANCE CARRIER

220 Montgomery Street  
INSURANCE CARRIER'S ADDRESS  
San Francisco, California

1. JOHN WYSS, 10/14/99, alleges that while employed on Nov. 10, 1961  
NAME OF EMPLOYEE DATE OF BIRTH DATE OF INJURY  
as an asbestos worker at various places, California  
OCCUPATION AT TIME OF INJURY CITY, TOWN OR PLACE WHERE INJURY OCCURRED

Mundet Cork Co., he sustained injury arising out of and in the course of the employment, as follows:  
NAME OF EMPLOYEE  
Exposure to dust and foreign substances over many years resulting in  
EXPLAIN HOW INJURY WAS RECEIVED  
chest disability

STATE WHAT PARTS OF BODY WERE INJURED AND SUBSEQUENT RESULTS

2. Aetna Casualty & Surety Co. was the employer's insurance carrier on date of injury  
NAME OF INSURANCE COMPANY OR, IF EMPLOYER WAS NOT INSURED, STATE WHETHER SELF-INSURED OR UNINSURED

3. November 10, 1961 to present  
PERIODS OFF WORK DUE TO THE INJURY DATE INJURED RETURNED TO WORK DATE LAST MEDICAL FURNISHED

4. Was compensation paid? no \$            \$             
YES OR NO TOTAL PAID WEEKLY RATE DATE OF LAST PAYMENT

5. Earnings at time of injury \$ max @            The basis of pay was             
MONTH OR WEEK STATE PAY PERIOD OR HOURLY RATE, HOURS A DAY AND DAYS A WEEK

6. Was medical treatment needed? yes Who furnished treatment? self  
YES OR NO

GIVE NAMES OF DOCTORS WHO TREATED THE INJURY AND STATE WHO PAID THEIR BILLS

7. This application is filed to determine liability for:

a. Temporary disability yes b. Permanent disability yes c. Medical treatment yes d. Medical costs             
YES OR NO YES OR NO YES OR NO YES OR NO

e. Litigation expense            f.             
YES OR NO STATE ANY OTHER REASON

8. 59 OAK 1345  
LIST CASE NUMBERS OF ANY OTHER APPLICATIONS FILED

WHEREFORE, it is requested that a time and place be fixed for hearing and that an award be made granting such relief as may be proper under the Workmen's Compensation Laws of California.

Dated at Oakland, California, January 10, 1962

garding the various listed employers.

Coen Company - No Record.

Mundet Cork Corp. - No record prior to 12-31-39

Aetna Casualty & Surety Co.,	Policy 1C-110500, 12-31-39/44
"	Policy 1C-10000, 12-31-40/45
"	Policy C-20200, 12-31-45/46
"	Policy 1-C32100, 12-31-46/47
"	Policy 1-C44800, 12-31-47/48
"	Policy 1-C44800, 12-31-48/49
"	Policy 1-C70600, 12-31-49/50
"	Policy 1-C6720, 12-31-52/53
"	Policy 1-C23413, 12-31-60/61

Plant Rubber & Asbestos Works - No Record.

R. W. Giddings Supply Co. - No Record.

Bay Cities Asbestos Co., Ltd. - No Record.

Western Asbestos Co.

State Compensation Ins. Fund, Policy 93224, 1937 through 1962

Standard Asbestos Co. - No Record.

Warren & Bailey Co. - No Record.

F. Thorpe & Son, Inc.

Pacific Employers Ins. Co., Policy C-59886, 9-30-38/39

" Policy C-70781, 10-1-39/40

Industrial Indemnity Co., Policy CC-100021, 1-1-56/57

Plant Asbestos Company - No record prior to 10-1-39.

Pacific Employers Ins. Co., Policy C-70782, 10-1-39/40

" Policy C-71790, 10-1-40/41

" Policy C-76945, 1-1-48/49

" Policy WCC-51378, 1-1-49/50

Industrial Indemnity Co., Policy CP-100654, 1-1-56/57

" Policy CP-608056, 1-1-59/60

Fish-Dee-Lish Corp. - No Record.

E. B. Badger & Sons Co. - No Record.

Harry A. Dutton, Jr., Dutton Asbestos Co. - No Record.

Van Arsdale Harris Lumber Co., Inc. - No Record.

Richmond Shipbuilding Corp. - No Record.

Western Precipitation - No Record.

Permanent Metals Corp. - No Record.

G. R. Dutton & C. A. Leighton, et al, Western Fiberglass Supply Ltd. - No Record.

Frecac-Lorentzen Co. - No Record.

Asbestos Supply Co. of Seattle - No Record.

Racoma Asbestos Co., Charles R. Brower & E. E. Saberhagen - No Record.

Metal Clad Insulation Co., Inc. - No Record.

Jarvis & Olson Co. - No Record.

Chas. R. Brower & Co., E. E. Saberhagen & E. J. Forest - No Record.

The E. J. Bartells Co.

Hardware Mutual Casualty Co., Policy 224680, 10-1-52/53

Charles Ayers Co. - No Record.

Fiberglass Engineering & Supply Co. of the Northwest, Inc. - Not California.

Northwest Cork & Asbestos, Inc. - No Record.

Armstrong Cork Co.

Travelers Insurance Co., Policy RUB-3386210, 1-1-54/55

" Policy RUB-4490459, 1-1-55/56

" Policy RUB-6443814, 1-1-56/57

Coast Insulating Products (A Corp.)

Argonaut Insurance Co., Policy 86736, 5-1-55/56

" Policy 95792, 5-1-56/57

Pacific Employers Ins. Co., Policy WC-15163, 5-1-57/58

Insulation & Asbestos Industry Works or North California Vacation Trust  
Fund Local No. 16 - No Record.

Muldoon Company

Industrial Indemnity Co., Policy CG-503004, 7-1-56/57

Owens Corning Fiberglass Corp.

Aetna Casualty & Surety Co., Policy 31-C-822, 9-1-56/57

" Policy 31-C-879, 9-1-57/58

" Policy 31-C-926, 9-1-58/59

Wm. Thomas Tuck - No Record.

Dan Cav

Industrial Indemnity Co., Policy CN-208831, 4-21-57/58

" Policy CN-216623, 4-21-58/59

Thos. C. Douglass, Jr., Douglass Insulation Co.

U.S. Fidelity & Guaranty Co., Policy CPJ-1065, 6-19-57/58

Armstrong Contracting & Supply Co.

Travelers Insurance Co., Policy RUB-7226992, 1-1-58/59

" Policy RUB-7768159, 1-1-59/60

Harold G. Lorentzen, Lorentzen Co.

Industrial Indemnity Co., Policy CC-600054, 1-1-59/60

Argonaut Insurance Co., Policy 53569, 1-1-60/61

" Policy 66879, 1-1-61/62

WORKMEN'S COMPENSATION APPEALS BOARD  
STATE OF CALIFORNIA

JOHN WYSS,

Applicant

vs

MUNDET CORK COMPANY, and AETNA  
CASUALTY & SURETY COMPANY, et al

Defendants

CASE NO. 62 OAK 7422

OPINION

and

ORDER

(Approving Compromise  
and Release)

APR 26 1966  
DATE

12 Reconsideration was granted herein and the case returned to  
13 the calendar for further hearing on the issue of proper parties  
14 defendant. A hearing was held and thereafter the parties filed a  
15 proposed settlement agreement providing for a lump sum payment to  
16 applicant in the sum of \$6,500.00, less attorneys' fees and costs,  
17 and further providing that applicant shall assume unpaid and future  
18 medical and hospital expense. We find, from the record and the  
19 settlement agreement, that no part of the proposed settlement sum  
20 is attributable to temporary disability indemnity.

21 It is the opinion of the Workmen's Compensation Appeals Board  
22 that the Compromise and Release Agreement is adequate and in the  
23 best interests of the parties and therefore should be approved.

24 Applicant's attorneys have rendered services herein of the  
25 reasonable value of \$650.00 and have advanced litigation costs in

on behalf of applicant.

*not @ w. a. s.*

1 (a) To applicant, John Wyss, by Aetna Casualty &  
2 Surety Company, the sum of \$2,499.55, less the  
3 sum of \$697.00 payable to Smith, Parrish, Paduck  
4 & Clancy for attorneys' fees and costs.....\$2,499.55

5 (b) To applicant, John Wyss, by the following:

6 State Compensation Insurance Fund.....1,429.34

7 Plant Rubber & Asbestos Works, a corporation.....790.09

8 Pacific Employers Insurance Company.....158.01

9 Industrial Indemnity Company.....215.48

10 Argonaut Insurance Company.....581.80

11 Fireman's Fund Insurance Company.....129.29

12 Travelers Insurance Company.....603.34

13 Ocean Accident & Guarantee Corp., Ltd.....43.10

14 United States Fidelity & Guaranty Company.....25.00

15 Employers Mutual Liability Insurance Company  
16 of Wisconsin.....25.00

17

18 TOTAL \$6,500.00

*Armstrong  
& A.C.S.  
Travelers  
only*

WORKMEN'S COMPENSATION APPEALS BOARD

*[Signature]*  
*[Signature]*  
*[Signature]*

Dated at San Francisco, California

APR 26 1966

Service by mail to all parties as shown on Official Address Record

---

Barry Castleman's Insulators' Workers Comp Files  
CD-ROM Document # IWC || CLAIM DATE 1963

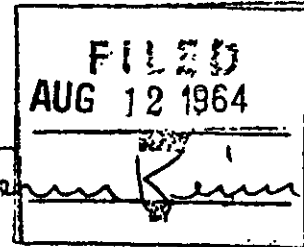
CLAIMANT: Goans

Contains all documents found in the claimant's file,  
with 1 blank page between each separate document.

BEFORE THE INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA  
CASE NO. 63 OAK 11052

ROBERT O. GOANS,  
Applicant,  
v.  
LORENTZEN & CO., et al,  
and ARGONAUT INSURANCE  
COMPANY, et al,  
Defendants.

ORDER APPROVING  
COMPROMISE AND RELEASE



The parties to the above entitled action having filed a Compromise and Release herein, on July 29, 1964, settling the above case for \$6750.00, in addition to all sums which may have been paid previously, and requesting that it be approved; and this Commission having considered the entire record, including said Compromise and Release, now finds that it should be approved; and,

GOOD CAUSE APPEARING THEREFOR,

IT IS ORDERED that said Compromise and Release be, it is hereby approved, payable as follows: To applicant, in lump sum, as follows:

\$800.00 payable by Aetna Casualty & Surety Co., on behalf of Mundet Cork Co., Fiberglass Engineering and Supply Co., and Owens-Illinois Fiberglass Co.;

25.00 payable by Zenith National Insurance Co., on behalf of Jackson-Hopkins Co.;

75.00 payable by Employers Liability Assurance Co Ltd., on behalf of National Insulation, Inc



1 \$75.00 payable by United States Fidelity &  
2 Guaranty Co.,

3 50.00 payable by Royal Indemnity Company;

4 125.00 payable by California Casualty Indemnity  
5 Exchange;

6 125.00 payable by Argonaut Insurance Company;

7 350.00 payable by Travelers Insurance Company;

8 575.00 payable by Industrial Indemnity Company;

9 1700.00 payable by Pacific Employers Insurance  
10 Company;

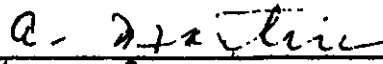
11 2850.00 payable by State Compensation Insurance  
12 Fund, less the sum of \$750.00 payable to  
13 Smith, Parrish, Paduck & Clancy as at-  
14 torney fee, less the sum of \$300.00 pay-  
15 able to Smith, Parrish, Paduck & Clancy  
16 for living expenses advanced applicant,  
17 and less the sum of \$309.40 payable to  
18 State of California, Department of Employ-  
19 ment, in satisfaction of lien claim.

20 INDUSTRIAL ACCIDENT COMMISSION

21   
22 MELVIN S. WITT,  
23 Referee

24 AUG 12 1964

25 Service upon (by A. Martin):  
26 All parties shown on Official Address Record.

27   
28 Signature of person serving order

(SEAL)

BEFORE THE INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA

ROBERT O. COANS,

Applicant,

vs.

LORENTZEN & COMPANY, AND  
ARGONAUT INSURANCE COMPANY, et al

Defendants.

NO. OAK 11052

MINUTES OF HEARING  
(CONTINUED)

AND  
ORDER DISMISSING  
PARTIES DEFENDANTS

Place and Time: Oakland - April 22, 1964, 9:00 a.m.

Referee: WITT  
Reporter: Jordan

Appearances: Applicant present; represented by Smith, Parrish, Fackel  
& Clancy, Attorneys (Joseph E. Smith appearing).

American Motorists Ins. Co., represented by P. E.  
Carignan, Attorney.

Employers Liability Assurance Corp., Ltd., and Zenith  
Natl. Ins. Co., represented by J. Patrick Goodwin, Atto

Assoc. Indemnity Corp., and Pacific Employers Ins. Co.,  
represented by Maileh & Filippi, Attorneys (Frank J.  
Filippi appearing).

S.C.I.F., represented by William Lowndes, Attorney.

Argonaut Ins. Co., Calif. Casualty Indemnity Exch., Roy  
Indemnity Co., United States Fidelity & Guaranty Co.,  
Standard Accident Ins. Co., Travelers Ins. Co., and  
Fireman's Fund Ins. Co., represented by Hanna & Brophy,  
Attorneys (William Broadbent appearing).

Aetna Casualty & Surety Co., represented by Sedgwick,  
Detert, Moran & Arnold, Attorneys (Theodore Neidermiller  
appearing).

Industrial Indemnity Company represented by R. C. Lynch  
Attorney.

American Motorists Insurance Company's coverage of C. S. Braun, having  
been in 1945, while the claimed employment was in 1938, and

GOOD CAUSE APPEARING THEREFOR; It is ordered that American Motoris  
Insurance Company be and it hereby is dismissed as a party defendant

GOOD CAUSE APPEARING THEREFOR; It is ordered that Associated  
Indemnity Corporation and Fireman's Fund Insurance Company be  
and they hereby are dismissed as parties defendants.

GOOD CAUSE APPEARING THEREFOR; It is ordered that Standard Acciden  
Insurance Company be and it hereby is dismissed as a party defendant

MELVIN S. WITT, Referee  
Oakland - 4/22/64

GOANS OAK 11052

REPORT OF REFEREE

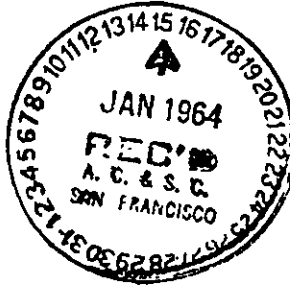
The parties arrived at a Compromise and Release agreement  
in the sum of \$6750.00.

DISPOSITION: Thirty days to file Compromise and Release  
agreement.

  
MELVIN S. WITT, Referee

MSW:vaj

January 14, 1964



Industrial Accident Commission  
Room 3000, State Building  
1111 Jackson Street  
Oakland 7, California

IN REPLY REFER TO

AO4183

Robert O. Goans

Re: Robert O. Goans vs. Western Asbestos Company (and others)  
and State Compensation Insurance, et al  
I.A.C. 63 OAK 11052

Gentlemen:

We are enclosing report of H. Corwin Hinshaw, M.D., dated  
October 14, 1963.

A copy of this report has been mailed to the parties listed  
below.

Very truly yours,

Charles M. McMillan  
Attorney

jr  
Enc

cc:

Robert O. Goans, 4232 - 25th Street, San Francisco, California  
Smith, Parrish, Paduck and Clancy, 315 Financial Center  
Building, Oakland 12, California  
Lorentzen and Company, 1155 Fifth Street, Oakland, California  
Warren Manley, c/o National Insulation Company, 503 Polk Street,  
San Francisco, California  
Argonaut Insurance Company, 550 California Street, San Francisco,  
California

Hanna and Brophy, 1540 San Pablo Avenue, Oakland 12, California  
J. Patrick Goodwin, 41 Sutter, San Francisco 4, California  
F. E. Carignan, c/o American Motorists Insurance Company,  
417 Montgomery Street, San Francisco 4, California  
Western Asbestos, P. O. Box 3784, Rincon Annex, San Francisco,  
California  
Mundet Cork Company, 410 Talbert Street, San Francisco, California  
Plant Rubber and Asbestos Works, 1300 - 64th Street, Oakland,  
California  
Plant Asbestos Company, 1300 - 64th Street, Emeryville 8,  
California  
Army Port Contractors, 1501 Maritime Street, Oakland, California  
Van Arsdale Harris Lumber Company, Fifth and Brannan Streets,  
San Francisco, California  
Bay Cities Asbestos Company, Ltd., Sixth and East 12th Streets,  
Oakland, California  
Harry A. Dutton, Jr., Dutton Asbestos Company, 532 Natoma Street,  
San Francisco, California  
C. F. Braun and Company, 1000 South Fremont Avenue, Alhambra,  
California  
✓ Asbestos Company of California, 941 - 16th Street, San Francisco 7  
California  
✓ Johns Mansville Sales Corporation, P. O. Box 3784, Rincon Annex,  
San Francisco, California  
Marine Engineering and Supply Company, 941 East 12th Street,  
Los Angeles, California  
✓ Armstrong Cork, 304 Shaw Road, South San Francisco, California  
M. R. Carpenter, 907 Front Street, Sacramento, California  
Caw Insulations, 3600 - 20th Avenue, Sacramento 17, California  
Fiberglass Engineering and Supply, 1200 - 17th Street, San Francis  
California  
✓ Owens Corning Fiberglass Corporation, 1200 - 17th Street,  
San Francisco, California  
Charles Ayres Company, 698 Minnesota Street, San Francisco,  
California  
Department of Employment, P. O. Box 3534, San Francisco, Californi  
Coast Insulation Products, 2316 San Fernando Road, Los Angeles,  
California  
Thomas C. Douglas, Jr., Douglas Insulating Company, 2233 Ingalls,  
San Francisco, California  
J. T. Thorpe and Sons, 1351 Ocean Avenue, Emeryville, California  
Armstrong Contracting and Supply, c/o Armstrong Cork, 304 Shaw  
Road, South San Francisco, California  
National Insulation, Inc., 503 Polk Street, San Francisco,  
California  
Jackson Hopkins Company, Inc., P. O. Box 490, Bakersfield,  
California  
Kelly Asbestos, Inc., 2030 Grand Avenue, Kansas City 8, Missouri  
Asbestos Products, Inc., 710 Raymond Avenue, St. Paul 4,  
Minnesota  
Asbestos Products and Fabricators Corporation, 2316 San Fernando  
Road, Los Angeles, California

Aetna Casualty and Surety Company, 926 J Building, Room 1308,  
Sacramento 14, California  
Employers Mutual Liability Insurance Company of Wisconsin,  
114 Sansome Street, San Francisco 4, California  
Standard Accident Insurance Company, 433 California Street,  
San Francisco, California  
Industrial Indemnity Company, 350 Sansome, San Francisco,  
California  
United States Fidelity and Guarantee Company, 444 California  
Street, San Francisco, California  
Employers Liability Assurance Corporation, Ltd., 1050 Russ  
Building, San Francisco 4, California  
Fireman's Fund Insurance Company, 330 - 19th Street, Oakland 12,  
California  
Travelers Insurance Company, 1956 Webster Street, Oakland 12,  
California  
American Motorists Insurance Company, 417 Montgomery Street,  
San Francisco 4, California  
American Employers' Insurance Company, Russ Bldg., San Francisco,  
Zurich General Accident, 417 Montgomery Street, San Francisco,  
California  
Industrial Indemnity Exchange, 350 Sansome, San Francisco,  
California  
Associated Indemnity Corporation, 332 Pine, San Francisco,  
California  
California Casualty Indemnity Exchange, 550 Kearny Street,  
San Francisco 8, California  
Pacific Employers Insurance Company, 244 Pine Street,  
San Francisco 4, California  
Zenith National Insurance Company, 582 Market Street,  
San Francisco, California  
Argonaut Insurance Exchange, 550 California Street, San Francisco,  
California

Legal

A04183  
1/2 04

H. CORWIN HINSHAW, M. D.  
HORTON C. HINSHAW, JR., M. D.  
450 BUTTER STREET  
SAN FRANCISCO 8, CALIFORNIA

TELEPHONE  
YUKON 2-7168

October 14, 1963

From: H. Corwin Hinshaw, M. D.

To: State Compensation Insurance Fund  
525 Golden Gate Avenue  
San Francisco 1, California

Subject: Robert O. Goans  
A04183  
REPORT OF SPECIAL MEDICAL EXAMINATION

Purpose of the Examination:

To determine Mr. Goans' present physical condition with special reference to his reported pneumoconiosis attributed to exposure while doing insulation work over a period of 43 or 44 years.

The patient states that he has worked as an insulator since a young man, less than 10 years of age, during the period of World War I. He says that over these years he has used many different kinds of insulating materials particular asbestos and corrugated paper during early years and during the last four years or so has been concerned mainly with fiberglass insulation. He says that he has worked in all kinds of construction including ships and public buildings. Usually the work has involved the insulation of pipes and boilers rather than walls. Frequently the work involved insulation of both hot and cold air duct lines. He says that frequently there was dust and sometimes he was required to work in relatively closed poorly ventilated spaces.

He considered himself to be well and had no complaints until recently. He says that three or four years ago his union made arrangements to have members take x-rays a year at the Kaiser Hospital in Oakland, California. He believes that his first x-ray was made about three years ago and that he had never had an x-ray of the chest made before. He was told at that time that there was evidence of some dust in his lungs, at first confined "on the bottom of the lungs" but in more recent years that this was worsening and that it involved not only "the bottom" but also "the top of the lungs". When informed that this was a progressive disease he went to see a physician in San Francisco, Doctor Walter Kolman (3490 - 20th Street). Doctor Kolman confirmed the diagnosis and advised Mr. Goans to discontinue his work and to apply for disability benefits. The patient states that he has been eager to continue working if possible until the usual retirement age of 65 years but, of course, he is not willing to run any risk of serious pulmonary difficulty. He says that it is not possible to escape all exposure to dust in his occupation and that he would not be able to find a job in this industry that does not involve dust exposure.

NOV 6 1963

OAK LEAD

Page 2:  
From:  
To:  
Subject:

October 14, 1963  
H. Corwin Hinshaw, M.D.  
State Compensation Insurance Fund  
Robert O. Goans

He says that he had had no significant symptoms during previous years and he recites an instance of excessive physical activity about 1936 in connection with a deer hunting expedition he was forced to run for a distance of about one and one-half miles and this was done without serious difficulty. He says that he worked at an altitude of about 6000 feet in the vicinity of Reno about two or three years ago and he does not recall any difficulty breathing at that altitude. Since learning of his x-ray changes he has noted cough and expectoration, especially during the last year or two, shortness of breath mostly during the past year or two. He says that if he walks slowly for a moderate distance he would not have any shortness of breath but if he attempted to walk rapidly he did some other unusual effort that he would become short of breath and stop. He has chest pain on such occasions. He says that he also has developed a cough in the last year or so. He coughs up some sputum which is never bloody and apparently is neither green or yellow pus. He has not done any work at all the last nine months or so.

#### Present Symptoms:

He says that his general health and strength would be satisfactory except for his lung difficulty. He does not believe he has lost any weight in the last year although his present weight is about 10 or 15 pounds below his usual weight.

Respiratory Symptoms - He says that he has a mild cough in the morning with expectoration of clear sputum. He has never expectorated blood. He has never had asthmatic symptoms such as wheezing, no chest pain. He has moderately severe shortness of breath on unusual activity as described previously. He is not particularly prone to develop respiratory infections.

Cardiac Symptoms - He has never had a heart attack. He has no anginal pain, no palpitation, no swelling of the ankles.

Gastro-intestinal Symptoms - His appetite is satisfactory, no abdominal pain, no constipation or diarrhea, no difficulty swallowing.

Genito-urinary Symptoms - No frequency, no nocturia, no pain, no obstruction to the flow of urine or any other symptom to suggest kidney or bladder disorder.

Eyes - He says that he has a cataract in his right eye. The left eye gives satisfactory vision. His hearing is satisfactory.

No symptoms related to the nose, sinuses, etc.

Neuromuscular, Skeletal, Central Nervous System - No paralysis, no weakness, no bone or joint symptoms, no central nervous system disorders.

#### Personal Habits:

He smokes 20 to 30 cigarettes a day and has all of his adult life. He drinks regular beer and says that he always has a "shot" before breakfast and sometimes drinks as much as a pint a day. He says that he has never become intoxicated and does not go on drinking sprees but drinks these amounts on a regular basis. He has been married twice. His first wife bore him one child but he does not know whether that child is still living. He has been married to his present wife for 38 years. They have had no children. He says that his wife has suffered from colitis. He does not know about the health of his mother and father, having had no communication with them since 1926. They were living in



Page 3:      October 14, 1963  
From:        H. Corwin Hinshaw, M.D.  
To:          State Compensation Insurance Fund  
Subject:     Robert O. Goans

State of Missouri. He is not sure how many brothers or sisters he has but thinks there were seven or eight in the family. He has not had any contact with them for many years.

**Past Medical History:**

In 1950 he had an injury which included a fracture of his left heel and was in Sutter Hospital in Sacramento. He does not know whether he had an x-ray of his chest at that time or not. His physician was Doctor Horn. He also sprained his right wrist but that did not require hospitalization. He has never been in a hospital in any other circumstance. He has never been in military service. He has not had any serious childhood disease. He has never been hospitalized for any other condition. He doesn't believe he has ever had pleurisy, pneumonia, jaundice, rheumatic fever, malaria, syphilis, other accidents or injuries aside from those mentioned, no hay fever, asthma, heart attacks, etc.

THE FOREGOING PORTION OF THIS REPORT WAS DICTATED IN THE PATIENT'S PRESENCE ON OCTOBER 11, 1963.

**Physical Examination:**

General Appearance - The patient's general appearance is satisfactory. He looks like a well man and he seems to be frank and cooperative. His appearance is consistent with his statement that he is of partial Cherokee Indian extraction and part Anglo Saxon. Blood Pressure - Abnormal, consistently elevated to a level of 180 to 200 systolic and 90 diastolic.

Pulse - Normal, 64 and regular.

Temperature - Normal, 98.4°.

Eyes - Pupils are round, regular and equal, reflexes to light and accommodation normal. External ocular movements are normal.

Oral Cavity - No significant findings.

Lymph Nodes - None are enlarged or diseased.

Thyroid - Normal. Breasts Normal. Skin Normal, no cyanosis.

Chest Wall - Shape is within normal limits. Respiratory excursion satisfactory. No tenderness.

Lungs - Percussion note normal, breath sounds within normal limits. No wheezes heard. There were a few basal rales rather coarse and symmetrically distributed on both sides, suggesting pulmonary congestion.

Heart - Size indeterminate, rhythm regular, no murmurs or other abnormalities detected. No distention of neck veins in the upright position.

Abdomen - No enlargement of liver, spleen or kidneys. No abnormal masses palpable. No unusual tenderness.

**Electrocardiogram:**

Auricular Rate 70, Ventricular Rate 70, Rhythm Sinus, T Waves Normal, P-R Interval 0.16, Q-R-S Interval 0.06, S-T Segment Isoelectric, Position Semi-vertical, Electrical Axis Normal.

REMARKS: Normal record.

NOV 6 1963

Page 4:  
From:  
To:  
Subject:

October 14, 1963  
H. Corwin Hinshaw, M.D.  
State Compensation Insurance Fund  
Robert O. Goans

Urinalysis: (Gerson R. Biskind, M.D. - Medical Laboratory)  
Color Yellow, Turbidity Clear, Reaction pH 6.0, Spec. Grav. 1.021,  
Albumin Negative, Sugar Negative, Urobilinogen (normal pos. 1:10) pos. dir.  
neg. 1:10, Epithelial Cells rare sq., RBC/hdf 0, WBC/hdf Occ., Casts 0, Bacteri  
Crystals 0, Mucus Threads 0.

Complete Blood Count:  
Hemoglobin 97%, 15.0 Gm., Erythrocyte Count 4.98 Million, Color Index 0.97,  
Leukocyte Count 9,400, Polymorph. Neutr. 59%, Filamented 58%, Nonfilamented  
Eosinophiles 1%, Basophiles 0%, Lymphocytes 34%, Monocytes 6%.  
Rare atypical lymphocytes noted; the red blood cells and platelets appear nor

Blood Serology:  
VDRL - Nonreactive.  
Kolmer - Nonreactive.

X-ray Examination of the Chest:  
Stereoscopic and left lateral projections show a bony thorax within normal limits  
heart shadow is questionably enlarged and the aortic shadow is prominent. Both  
hemidiaphragms are irregular in contour and hazy in outline. Most impressive  
fine linear densities extending out from both hilar regions into the base of each l  
some less distinct and coarser strands extending into the right apex. There is  
of the right cardiophrenic angle but it is unclear whether this is cardiac or pulm  
origin and most likely it is a distortion of the cardiac outline produced by pleur  
IMPRESSION: The appearance is that of diffuse rather extensive and moderate  
pulmonary fibrosis such as is seen in cases of asbestosis. The pleural changes  
compatible with this diagnosis.

Tests of Pulmonary Function:  
One second forced expiratory volume - 2.2 liters, two seconds 2.6 liters, three  
2.9 liters and total 2.9 liters.  
Maximal Breathing Capacity - 68 liters per minute.  
IMPRESSION: The picture is one of moderate restrictive lung disease with ne  
air flow rate (175 liters per minute on the spirogram). Such restrictive disea  
in pulmonary fibrosis, congestive heart failure, etc. The ventilation as meas  
should be adequate to permit moderate physical activity in so far as such an e  
can be made by these methods.

Discussion and Summary:

This patient has definite elevation of his blood pressure, moderately severe p  
fibrosis (presumably asbestosis) and symptoms of reduction in exertion toler  
only recently.

On the basis of our x-ray findings and his history of exposure, it seems prob  
1007 6

Page 5:      October 14, 1963  
From:        H. Corwin Hinshaw, M.D.  
To:           State Compensation Insurance Fund  
Subject:      Robert O. Goans

Discussion and Summary CONTINUED:

his pulmonary fibrosis has been present for many years, that it is of occupational origin and due principally if not entirely to exposure to asbestos fibers. His symptoms are described as having been of rather recent origin and I suspect that the cardiac stress of his hypertension may have been the recently added factor which has combined with the pre-existing and probably longstanding pulmonary fibrosis to produce the symptoms.

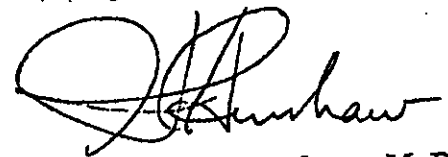
Since Mr. Goans is so near to his normal retirement age, he is eager to remain employed until the age of 65. It is my opinion that it would not be deleterious to his physical welfare to continue working provided he can be assigned to tasks that do not involve inhalation of pathogenic dusts or fibers in the air.

He should be under continuous medical supervision and if the hypertensive trend continues he should probably receive antihypertensive drugs. In the event that these are made effective in relieving his symptoms, it would tend to confirm the belief that the cardiac aspect of his disability was an important one.

Previous x-ray films have not yet been obtained for comparison with current film.

The most reliable method of analyzing his cardiac and hypertensive status would be to admit him to a hospital for a week or two of appropriate treatment designed to control his hypertension and to relieve any pulmonary congestion produced by this condition. However, the existence of pulmonary fibrosis of occupational origin has been satisfactorily established by present studies, in my opinion.

Very truly yours,



H. Corwin Hinshaw, M.D.

HCHDF

RECEIVED

NOV 1 1

NOV 6 1963 F. LEGAL

LEGAL

Barry Castleman's Insulators' Workers Comp Files  
CD-ROM Document # IWC 32 CLAIM DATE

CLAIMANT: STAPLES

Contains all documents found in the claimant's file,  
with 1 blank page between each separate document.

Armstrong List -- John Staples, California

*also owns ~~Corning~~*

The only defendant of interest besides Armstrong is Mundet Cork. Mr. Staples had about 10 years of pipe covering work, including less than a year total with "Armstrong Construction". The claim was filed May 17, 1962. The parties applied to the Commission for approval of a Compromise and Release Agreement January 11, 1963, and this was approved February 14, 1963. Total amount paid was \$9,250, of which \$21.80 came from Armstrong's carrier, Travelers. It appears from the reports of doctors from both sides that Staples had partial disability from asbestosis, at the age of 37.

July 25, 1978

*"Plant Asbestos" also named.*

1 BEFORE THE INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA  
2 CASE NO. 62 LB 19396  
3

4 JOHN D. STAPLES, )

5 Applicant )

6 -vs- )

7 BAKER PERKINS; J. T. THORPE; )  
8 C. F. BRAUN; COAST INSULATING; )  
9 OIL FIELD CONSTRUCTION; )  
10 ~~ARMSTRONG CONTRACTOR;~~ )

ORDER APPROVING  
COMPROMISE AND RELEASE

11 FIBERGLASS ENGINEERING; REECE )  
12 INSULATION; R. T. DINWIDDIE; )  
13 KIRCHER ASBESTOS; ~~MUNDET CORK CORP.;~~ )  
14 LOS ANGELES CORK; CAL STATE COMPANY; )  
15 PLANT ASBESTOS; )  
16 AMERICAN MOTORISTS INSURANCE CO.; )  
17 CASUALTY INS. CO. OF CALIFORNIA; )  
18 STATE COMPENSATION INS. FUND; )  
19 ZURICH INSURANCE COMPANY; )  
20 PACIFIC EMPLOYERS INSURANCE CO.; )  
21 ARGONAUT INSURANCE COMPANY; )  
22 TRAVELERS INSURANCE COMPANY; )  
23 NATIONAL AUTO & CASUALTY COMPANY; )  
24 AETNA CASUALTY & SURETY COMPANY; )  
25 MICHIGAN MUTUAL LIABILITY COMPANY; )  
INDUSTRIAL INDEMNITY COMPANY; )  
AMERICAN EMPLOYERS INSURANCE CO., )

Defendants )

20 The parties to the above entitled action having filed a Com-  
21 promise and Release herein, on January 11, 1963, settling the above  
22 case for \$9,250.00 in addition to all sums which may have been paid  
23 previously, and requesting that it be approved; and this Commission  
24 having considered the entire record, including said Compromise and  
25 Release, now finds that it should be approved; and,

(b) By Aetna Casualty & Surety Co. \$1918.70  
To: Silver, McWilliams & Sherman as attorneys' fee \$750.00  
John D. Staples, applicant 1168.70

The following sums are to be paid to applicant by carriers as designated:

(c) Pacific Employers Ins. Co.	\$1,415.05
(d) American Motorists Ins. Co.	1,005.90
(e) Travelers Insurance Co.	821.80
(f) State Compensation Insurance Fund	800.00
(g) National Automobile & Casualty Ins. Co.	703.85
(h) American Employers Ins. Co.	120.75
(i) Zurich Insurance Company	120.40
(j) Casualty Ins. Co. of California	57.40
(k) Michigan Mutual Liability	39.20
(l) Argonaut Insurance Company	25.00
Total	\$9,250.00

INDUSTRIAL ACCIDENT COMMISSION

GW:ca

1.31.63

62 LB 19396

DATE

FEB 1-1963 ag

*George Westorick*  
Referee

Names and Address of Persons Served:

John D. Staples, 10634 Ceres, Whittier  
Silver, McWilliams & Sherman, 305 1/2 N. Avalon, Wilmington  
Dept. of Employment, P. O. Box 1477, Santa Ana  
~~Armstrong Construction~~, 4400 E. Bandini, Los Angeles  
C. F. Braun, 1000 Fremont St., Alhambra  
Cal State Company, 8823 Mettler St., Los Angeles  
Coast Insulating, 2684 Lacy St., Los Angeles  
R. T. Dinwiddie, 8627 So. Atlantic, South Gate  
Fiberglass Engineering, 5933 Telegraph Rd., Los Angeles  
Los Angeles Cork, 4180 E. Washington, Los Angeles  
Kircher Asbestos, Box 6652, Phoenix, Arizona  
~~Mundt Cork Corp.~~, 6116 Walker, Maywood  
Oil Field Construction, Box 947, Bakersfield  
Plant Asbestos Co., 1540 W. 9th, Long Beach  
Baker Perkins, 1000 Hess, Saginaw, Michigan  
Reece Insulation Co., by Clark Reece, 4563 Valley Blvd., Los Angeles  
J. T. Thorpe, 948 E. 2nd St., Los Angeles  
Aetna Casualty & Surety Co., ~~910 S. Spring~~, Los Angeles - 2404 Wilshire  
American Motorists Ins. Co., 3545 Wilshire, Los Angeles  
American Employers Ins. Co., 639 S. New Hampshire, Los Angeles  
Argonaut Insurance Co., 1001 Wilshire Blvd., Los Angeles

FEB 1-1963 *sg*

1 Names and address of Persons Served (continued):

- 2 - Herlihy & Herlihy, 110 W. Ocean Blvd., Long Beach 2  
3 - Murray H. Roberts, 750 Broad Ave., Wilmington  
4 - Clopton & Penny, 639 South Spring St., Los Angeles  
5 - Wallace & Brown, 300 West Coast Highway, Newport Beach  
6 - *Mr. Courtney, Ryan, Drent & Dally, 639 S. Spring St., L.A. 14* *sg 2-1-63*  
7 - *Arnold Smith, Forum Bldg., Sacramento* *sg 2-1-63*

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CASE NO. 62 LB 19396

JOHN D. STAPLES

-vs-

BAKER PERKINS; J. T. THORPE;  
C. F. BRAUN; COAST INSULATING;  
OIL FIELD CONSTRUCTION;  
ARMSTRONG CONTRACTOR;  
FIBERGLASS ENGINEERING;  
REECE INSULATION; R. T. DINWIDDIE  
PLANT ASBESTOS; MUNDET CORK CORP.  
LOS ANGELES CORK; KIRCHER ASBESTO  
CAL STATE COMPANY;  
AMERICAN MOTORISTS INS. CO.;  
CASUALTY INS. CO. OF CALIFORNIA;  
STATE COMPENSATION INS. FUND;  
ZURICH INSURANCE COMPANY;  
PACIFIC EMPLOYERS INSURANCE CO.;  
ARGONAUT INSURANCE COMPANY;  
TRAVELERS INSURANCE COMPANY;  
NATIONAL AUTO & CASUALTY CO.;  
AETNA CASUALTY & SURETY CO.;  
MICHIGAN MUTUAL LIABILITY CO.;  
INDUSTRIAL INDEMNITY COMPANY  
AMERICAN EMPLOYERS INS. CO.

Referee: GEORGE WESTWICK  
Dictated: January 31, 1963

Injury: Between 1953 and  
March 7, 1962

Silver, McWilliams & Sherman, by Richard McWilliams  
attorneys for applicant  
F. W. Carignan, representative for American Motorists  
Herlihy & Herlihy, by Kennis Jones, attorneys for Argonaut  
Ins. Co. and American Employers  
John Montgomery, representative for Travelers Insurance Co.  
Murray H. Roberts, by James Thomason, attorneys for Zurich Ins.  
Clopton & Penny, by Robert Wills, attorneys for Pacific Employer  
Eugene Barnes, attorney for Industrial Indemnity  
Paul Klein, attorney for State Comp. Insurance Fund  
Wallace & Brown, by Gerald Brown, attorneys for Aetna Casualty  
and Surety Company  
Maury & Schuyler, by Rob R. Schuyler, attorneys for Michigan  
Mutual Liability Company  
Licker & McClure, by Robert Licker, attorneys for National  
Auto & Casualty Company

REPORT OF REFEREE ON ORDER APPROVING COMPROMISE AND  
RELEASE

Based upon the record the proposed settlement will be approved  
as adequate.

Lien claim of Department of Employment will be allowed to the  
extent of \$996.22. This is pursuant to allocation proposed by the  
parties. Notice of Intention to allow said lien in said amount was  
issued, and no objection was received during the time provided.

Silver, McWilliams & Sherman are entitled to a lien in the sum  
of \$50.00 for living expenses advanced.

Both of the above liens are payable by Industrial Indemnity Company

JOHN D. STAPLES

CASE NO. 62 LB 19396

from the amount designated to be paid by them.

Applicant's attorneys are entitled to a fee of \$750.00. Said fee is payable from the amount designated to be paid by Aetna Casualty & Surety Company.

George Westwick  
Referee

GW:ca

GW

RECEIVED  
JAN 11 1963  
COMM. NO. 62 LB 19396  
FILED  
LOS ANGELES

1 John J. Wren  
2 Attorney at Law  
3 3745 Long Beach Blvd.,  
4 Long Beach, California  
5 Telephone: GARfield 4-0411

6 BEFORE THE INDUSTRIAL ACCIDENT COMMISSION OF THE  
7 STATE OF CALIFORNIA

8 JOINT COMPROMISE AND RELEASE

CASE NO. 62 LB 19396

10 JOHN D. STAPLES 10634 Ceres, Whittier, Calif.  
11 Applicant

12 -vs-

13 <u>ARMSTRONG CONSTRUCTION</u>	4400 E. Bandini, Los Angeles
14 C. F. BRAUN	1000 Fremont St., Alhambra
15 CAL STATE COMPANY	8823 Mettler St., Los Angeles
16 COAST INSULATING	2684 Lacy St., Los Angeles, Calif.
17 R. T. DIMWIDDIE	8627 So. Atlantic, South Gate
18 FIBERGLAS ENGINEERING	5933 Telegraph Rd., Los Angeles
19 L A CORK	4189 E. Washington, Los Angeles
20 KIRCHER ASBESTOS,	Box 6652, Phoenix, Arizona
21 <u>MUNDET CORK CORP., a corporation</u>	6116 Walker, Maywood, California
22 OIL FIELD CONSTRUCTION	Box 947, Bakersfield, California
23 PLANT ASBESTOS Co., a corporation	1540 West 9th, Long Beach, Calif.
24 BAKER PERKINS	1000 Hess, Saginaw, Michigan
25 REECE INSULATION COMPANY, Clark 26 Reece, dba	4563 Valley Blvd., Los Angeles

1	ARGONAUT INSURANCE CO.	1001 Wilshire Blvd., Los Angeles
2	CASUALTY INSURANCE CO. OF CALIF.	810 South Spring, Los Angeles
3	a corporation	
4	INDUSTRIAL INDEMNITY COMPANY	3745 Long Beach Blvd., Long Beach
5	a corporation	
6	MICHIGAN MUTUAL LIABILITY	c/o Brown Bros. Adjustors,
7		3517 West Sixth St., Los Angeles
8	NATIONAL AUTOMOBILE AND CASUALTY	633 South Spring St., Los Angeles
9	INSURANCE CO.	
10	PACIFIC EMPLOYERS INS. CO.	2484 Pacific Avenue, Long Beach
11	STATE COMPENSATION INS. FUND	3629 Atlantic Ave. Long Beach
12	TRAVELERS INSURANCE COMPANY	Ocean Center Bldg., Long Beach
13	ZURICH INSURANCE COMPANY	Box 3203, Terminal Annex
14		Los Angeles

**Insurance Carriers**

**Addresses**

The parties hereto, for the purpose of Compromise only, hereby submit the following agreed statement of fact.

1. That John D. Staples, the applicant herein, was born on June 24, 1925.

2. That John Staples, while employed as a heating and air conditioning installer, for Armstrong Construction, C. F. Braun, Cal State Company, Coast Insulating, R. T. Dinwiddle, Fiberglass Engineering, L. A. Cork, Kircher Asbestos, Mundet Cork Corp, a corporation, Oil Field Construction Company, Plant Asbestos Company, a corporation, Baker Perkins, Reece Insulation Company, Clark Reece, dba, J. T. Thorpe and Weber Baking Company, at various wages, at

1 3. That John D. Staples, alleges that as a result of the said  
2 injuries, he has suffered a permanent disability.

3 4. That during the periods alleged, the insurance companies were  
4 as follows:

5 (a) Armstrong Construction: Travelers Insurance Co.  
6 {January 1, 1955 to July 29, 1955;}  
7 {April 23, 1957 to July 31, 1957 }  
8 {March 2, 1962 to March 2, 1962 }

9 (b) C. F. Braun: American Motorists Ins. Co.  
10 January 1, 1954 to January 1, 1955  
11 J.T. THORPE INC. - AMERICAN MOTORISTS INS. CO.  
12 JAN. 1955 TO JAN. 1959

13 (c) Cal State Company: No Record of Coverage

14 (d) Coast Insulating: Pacific Employers Ins. Co.  
15 May 1, 1961 to May 1, 1962

16 (e) R. T. Dinwiddle: State Compensation Ins. Fund.  
17 July 1, 1958 to July 1, 1959

18 (f) Fiberglas Engineering: Aetna Casualty and Surety Co.  
19 {March 1, 1954 to September 1, 1959 }  
20 {September 1, 1961 to September 1, 1962 }

21 (g) L. A. Cork: Zurich Insurance Company  
22 October 27, 1959 to October 27, 1960

23 (h) Kircher Asbestos: No Record of Coverage

24 (i) Mundet Cork Co, a corp; Aetna Casualty and Surety Co.  
25 December 31, 1960 to December 31, 1961

(j) Oil Field Construction Co; Casualty Ins. Co. of Calif.  
January 1, 1954 to January 1, 1955

(k) Plant Asbestos Co., a corp; Industrial Indemnity Co.  
January 1, 1960 to January 1, 1961  
(2) American Employers Ins. Co.  
January 1, 1962 to January 1, 1963

(l) Baker Perkins and Weber Baking Co; Michigan Mutual Liab.  
January 1, 1953 to January 1, 1954

(m) Reece Insulation Co. Clark Reece dba:

1 understood, and intended by each and all of the parties hereto,  
2 that the amount set forth below will be paid and received in con-  
3 sideration of the release of the above named insurance carriers  
4 and each of them, together with a release of each and all of the  
5 above named employers.

6 It is further agreed that the release herein and hereby  
7 granted by the applicant shall extend and inure to the benefit of  
8 any and all employers, whether named in this proceeding or not.

9 5. That the actual weekly wages of the employee at the time of  
10 the claimed injuries are in dispute; that the average weekly  
11 wages are in dispute.

12 6. That applicant contends that he was temporarily disabled as a  
13 result of his injuries; that defendants and each of them deny that  
14 applicant was temporarily disabled from his employment due to any  
15 injury or injuries.

16 7. That medical treatment was necessary and that such treatment  
17 was obtained by applicant on a self-procured basis.

18 8. That the parties hereby agree to settle any and all claims on  
19 account of said injuries by payment of the sum of \$9,250.00,  
20 apportioned as follows:

21	(a)	Industrial Indemnity Company:	\$2,221.95
22	(b)	Aetna Casualty & Surety Co.	1,918.70
	(c)	Pacific Employers Ins. Co.	1,415.05
	(d)	American Motorist Ins. Co.	1,005.90
23	(e)	Travelers Ins. Co.	821.80
	(f)	State Compensation Ins. Fund	800.00
24	(g)	National Automobile & Casualty Ins. Co.	703.85
	(h)	American Employers Ins. Co.	120.75
25	(i)	Zurich Insurance Co.	120.40
	(j)	Casualty Ins. Co. of California	57.40
26	(k)	Michigan Mutual Liability	39.20

1 which may have otherwise been properly claimed under Labor Code  
2 Section 4600 to have been the responsibility of the defendants  
3 herein.

4 8. (a) That the sum of \$9,250.00 shall have deducted the follow-  
5 ing disbursements which shall be made directly to those persons,  
6 companies, corporations or firms as set forth below and such dis-  
7 bursements shall be made from the amount designated to be paid by  
8 Industrial Indemnity Company as set forth in Item #8 above; that  
9 the herein disbursements represent reduced lien claims of record  
10 and are payable in amounts as follows:

11 1. Less \$50.<sup>00</sup> to Silver & McWilliam for living expenses advanced.

12 2. \$996.<sup>22</sup> To DEPT. OF EMPLOYMENT.

13  
14 That any sums due by said Company not exhausted by disburse-  
15 ment or attorneys' fees set forth in Item #10 below shall be paid  
16 directly to the applicant or as the Honorable Commission may  
17 direct.

18 9. That all self procured medical, if any, shall be the sole  
19 responsibility of the applicant and that the defendants, or any  
20 of them, shall not be liable for any of said expense. That the  
21 defendants or their carriers, are responsible for medical treat-  
22 ment and/or examinations here-to-fore authorized by them, but  
23 that all future medical shall be the sole responsibility of the  
24 applicant herein.

25 10. That the name and address of applicant's attorneys is Silver

1 settlement the most practical solution to the problem posed by  
2 protracted litigation as follows: whether applicant's injuries  
3 arose out of and were sustained in the course and scope of employ-  
4 ment; date of injury; issue of occupational disease; applicability  
5 of the Statute of Limitations; extent of apportionment allowable  
6 as between defendants; applicant's actual earnings; applicant's  
7 average earnings; extent and duration of temporary disability, if  
8 any; nature, extent and duration of permanent disability, if any;  
9 need for further medical treatment; liability for self procured  
10 medical; liability for medical legal costs; allowance of reduction  
11 of lien claims; coverage for the periods of employment alleged.

12 The applicant desires a lump sum settlement and to take con-  
13 trol of his own medical treatment. The applicant, and the de-  
14 fendants, separately and as a group, desire to buy their peace and  
15 to avoid the expense, delay, hazard and uncertainty of extended  
16 litigation and to settle their differences for a sum certain. The  
17 applicant feels that the liens of \_\_\_\_\_ and  
18 \_\_\_\_\_ should be allowed in the sum of  
19 \$ Per Paragraph 8 of the amount claimed.

20 12. The undersigned request that this Compromise and Release  
21 Agreement be approved by the Honorable Commission.

22 13. Upon approval of this Compromise and Release Agreement by the  
23 Industrial Accident Commission or a panel thereof and payment in  
24 accordance with the provisions hereof, said employee releases and  
25 forever discharges said employers and insurance carriers from all



1 document is the filing of an application for adjustment of all  
2 claims on behalf of the employee, and that the Commission may in  
3 its discretion set the matter for hearing as a regular application,  
4 reserving to the parties the right to put in issue any of the  
5 facts submitted herein, and that if hearing is held with this  
6 document used as an application, the defendants shall have avail-  
7 able to them all defenses that were available as of the date of  
8 filing of this document, and that the Commission may thereafter  
9 either approve such a Compromise and Release Agreement or dis-  
10 approve the same and issue Findings and Award after hearing has  
11 been held and the matter regularly submitted for decision.

12 15. In further consideration of the payment in accordance here-  
13 with, applicant agrees that this release applies to all unknown  
14 and unanticipated injuries and damages resulting from such actions,  
15 casualties, events and/or employments, as well as those now dis-  
16 closed, and all rights under section 1542 of the Civil Code of  
17 the State of California are hereby waived. California Civil Code  
18 Section 1542 reads as follows:

19 "A general release does not extend to claims which the  
20 creditor does not know or suspect to exist in his favor  
21 at the time of executing the release, which if known, by  
22 him, must have materially effected his settlement with  
23 the debtor."

24 WITNESS the Signature hereof this 1st day of November, 1962, at  
25 Wilmington, Calif. .X John D. Staples

26 John D. Staples, Applicant  
SILVER, MCWILLIAMS & SHERMAN

Witnesses By Richard L. McWilliams  
The Injured Applicant's Attorney for Applicant

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ARGONAUT INSURANCE CO.

By James E. Thomason

CASUALTY INSURANCE CO. OF CALIF.

By Frank H. Roberts

INDUSTRIAL INDEMNITY COMPANY

By John J. Wren

John J. Wren, Attorney at Law

MICHIGAN MUTUAL LIABILITY

By Robert H. Wren

NATIONAL AUTOMOBILE AND CASUALTY

By Robert H. Wren

PACIFIC EMPLOYERS INS. CO.

By Clifton + Penny - Robert R. Wren

STATE COMPENSATION INS. FUND

By Paul Klein

TRAVELERS INSURANCE COMPANY

By John D. Staples

ZURICH INSURANCE COMPANY

By James E. Thomason

On this 1st day of November  
A.D., 1962, before me James E. Thomason  
James E. Thomason, a Notary Public in and  
for the said County and State, residing there-  
in, duly commissioned and sworn, personally  
appeared John D. Staples, known to me to be  
the person whose name is subscribed to the  
within instrument, and acknowledged to me that  
he executed the same.  
In Witness Whereof, I have hereunto set my  
hand and affixed my official seal the day and  
year in this Certificate first above written.  
James E. Thomason

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# Successor Asbestos-Related Liability Fairness Legislation: Separating Fact From Fiction

## HB 1430 is a Mainstream Proposal That Finds Strong Support

- Voted out of North Dakota House of Representatives on February 11, 2009.
- Similar laws exist in 7 states going back 7 years – Pennsylvania (2001), Texas (2003), Mississippi and Ohio (2004), Florida (2005), South Carolina (2006), and Georgia (2007).
- CSG adopted as Suggested State Legislation in December 2006.
- ALEC model Successor Asbestos-Related Liability Fairness Act approved August 2004.
- Voted out of Indiana House of Representatives on January 29, 2009.
- Voted out of Indiana Senate on February 19, 2009, with *unanimous* support.
- Voted out of South Dakota House Commerce Committee by *unanimous* vote on February 9, 2009, and out of the House of Representatives on February 12, 2009.

## The Bill is Limited; It Would Not Affect Hundreds of Companies

- In the many years and states where similar legislation has been law, no company other than Crown Cork & Seal has ever taken advantage of it, although if there are other innocent successors like Crown they should be treated the same.
- In an article dated *February 11, 2009*, plaintiffs' attorney Steven Cooperstein of the Brookman, Rosenberg, Brown & Sandler firm in Philadelphia candidly admitted that "Crown Cork is the only company he knows of that has stepped forward and said it falls under [Pennsylvania's successor liability reform law]." Gina Passarella, *Pa. Court Rejects Challenge to Statutory Limit on Asbestos Liability*, Law.com, Feb. 11, 2009, available at <http://www.law.com/jsp/article.jsp?id=1202428178179&rss=newswire>.

## The Bill Will Help Workers, Retirees, Customers, and Shareholders

- The bill is essential as a matter of fundamental fairness. Crown has already paid out more than \$600 million in asbestos-related payments even though it never made or sold an asbestos product at any time in its history.
- The bill is limited to strike a careful balance between providing fairness to innocent successors while minimizing the impact on potential asbestos plaintiffs.
- The bill would help preserve the jobs of thousands of American workers, many of them union members, at innocent successor companies such as Crown Cork & Seal. Local unions have supported this type of legislation because they know it can help preserve needed American jobs and health care benefits.
- The bill would help preserve the pensions and health care benefits of retirees of companies such as Crown.
- *Crown retirees in North Dakota include one person in Senator Nething's district: Roy Delapp; one person in Senator Hogue's district: Phillip Jones; and three people in Senator Heckaman's district: Darrell Miller, Linda Smith, and Ralph Imler.*
- Passage of the bill would help prevent business disruption at companies that buy bottle caps, lids, and cans from companies such as Crown. If competition is reduced in the marketplace as a result of a Crown bankruptcy, these customers may be forced to pay more for their supplies. These added costs would be likely to be passed on to ordinary consumers in the form of higher prices.

- The bill would help preserve the saving of ordinary Americans who are shareholders in companies like Crown such as through mutual and pension funds. These individuals would likely see their investments wiped out by a bankruptcy filing.

### **The Bill Has Only a Minimal Impact on Claimants**

- The bill applies only to innocent successors – i.e., companies that (1) made a decision to merge before the 1972 adoption of federal Occupational Safety & Health Act (OSHA) regulations governing workplace asbestos exposure, and (2) after the merger, did not engage in the business of mining asbestos, in the business of selling or distributing asbestos fibers, or in the business of manufacturing, distributing, removing, or installing asbestos-containing products that were the same or substantially the same as those products previously manufactured, distributed, removed, or installed by the transferor.
- These restrictions were put in the bill at the request of powerful asbestos plaintiffs' attorneys in other states to minimize the impact on potential plaintiffs by limiting the scope of the bill to innocent successors.
- Plaintiffs are still able to collect recoveries from premises owners and all other companies, including asbestos product manufacturers and sellers, which cannot be deemed to be "innocent successors." There are now over 8500 defendants that have been named in asbestos personal injury lawsuits.
- Plaintiffs also can collect from trusts created by companies that have been forced into bankruptcy as a result of asbestos-related liabilities. Trusts have been set up to pay claimants harmed by those companies' products. In fact, a mind-boggling amount of money is available to pay claimants outside the tort system. According to one recent estimate, "the trusts will hold at least \$35 *billion* in assets and potentially as much as \$60 *billion*." Some commentators have even said that "for the first time ever, trust recoveries may fully compensate asbestos victims."
- Furthermore, successor corporations are not granted complete immunity for lawsuits. Plaintiffs allegedly harmed by a predecessor can collect from the successor no less than the same amount they could have collected if no merger had occurred: the total gross asset value of that predecessor at the time of the merger. The successor would receive credit for settlements or judgments it has paid or committed to pay since the merger. The successor's liability would cease when it has paid or committed to pay as much as the predecessor's gross assets would now be worth (adjusted upward for the passage of time). Any successor that independently commits a tort, whether before or after a merger, could still be held liable to the full extent of its own assets for any harm it causes.

### **The Workers' Compensation System Will Not Be Affected**

- Plaintiffs can continue to collect workers' compensation benefits for workplace asbestos-related harms since the bill does not apply to workers' compensation claims.

### **Out-of-State Judgments Would be Respected**

- Some have asked what would happen if a person obtains a judgment against an innocent successor in a state that has not adopted a law like the subject bill. Could that judgment still be enforced here? The answer is yes. The Full Faith and Credit Clause of the United States Constitution provides that the out-of-state judgment would be respected if the judgment were sought to be enforced in this state.

### **The Bill is Constitutional**

- Every court that has ruled on the broad constitutionality of the law has upheld it.

- A broad attack on the constitutionality of the Pennsylvania law was rejected both by a Philadelphia trial court and by the Pennsylvania Superior Court on February 11, 2009. See *Vanaman v. DAP, Inc.*, 2007 WL 1385335 (Pa. Com. Pl. Apr. 17, 2007) (Tereshko, J.) (granting summary judgment to Crown Cork and dismissing all claims against it), *aff'd*, 2009 WL 325542 (Pa. Super. Feb. 11, 2009) (en banc) (holding that plaintiffs lacked standing to challenge the amended law).
- A Texas appellate court in *Robinson v. Crown Cork & Seal Co., Inc.*, 251 S.W.3d 520 (Tex. App.-Hous. May 4, 2006), *review granted* (Tex. Jan. 11, 2008), held that the Texas law did not violate the Texas Constitution's prohibition against special legislation.
- The only decisions going the other way addressed the *retroactive* application of the laws to cases that were pending on the date of enactment.
- In *Ieropoli v. AC&S Corp.*, 842 A.2d 919 (Pa. 2004), a sharply divided (4-3) Pennsylvania Supreme Court held a prior version of Pennsylvania's successor asbestos-related liability reform law violated the Remedies Provision of the Pennsylvania Constitution, as applied, because the law extinguished accrued causes of action. Importantly, the law was NOT declared unconstitutional on its face, but only as it applied retroactively. The Pennsylvania law was amended to address the retroactivity issue and the amended version has been upheld.
- The Texas appellate courts have reached mixed decisions as to the retroactive application of the Texas statute. The Houston appellate court in *Robinson* held that the retroactive application of a Texas successor asbestos-related liability reform law did not violate the Texas Constitution's prohibition against retroactive laws. On the other hand, in *Satterfield v. Crown Cork & Seal Co., Inc.*, 268 S.W.3d 190 (Tex. App.-Austin 2008), *reh'g overruled* (Oct. 7, 2008), an Austin appellate court held that the Texas law could not apply retroactively to claims pending at the time of enactment. The Texas Supreme Court has granted review of *Robinson* to clarify whether the Texas Constitution permits retroactive application of the statute to cases that were pending at the time of enactment.
- The bill addresses the retroactivity issue by the inclusion of new language that was not in the Pennsylvania or Texas laws. The bill states that "any provisions of these sections which would be unconstitutional if applied retroactively shall be applied prospectively." This language addresses the issue litigated in Pennsylvania in *Ieropoli* and in Texas in *Satterfield* by allowing the courts to decide, consistent with the North Dakota Constitution, whether the bill can be applied retroactively.

### **The Bill Is Not a Vehicle for Broader Reforms**

- In the seven states and seven years where similar laws have been on the books, there has never been an attempt anywhere to amend them.
- Legislators appreciate the bill for what it is - a surgical way to address fundamental fairness, help retirees, help preserve American jobs (union jobs) at innocent successor companies, and help prevent business disruptions for those companies' customers while minimizing the impact on asbestos plaintiffs. The bill is not a "foot in the door" for broader reforms.

### **The Bill Is Not a Corporate "Bailout"**

- The bill is not a bailout. It does not hand back to Crown Cork & Seal a single dollar of the hundreds of millions it has already spent on asbestos claims.
- The bill is completely different than the current federal bailout of the financial institutions to the tune of hundreds of billions of dollars for problems that the institutions themselves created.

### **"Buyer Beware" Does Not Apply Here**

- Some opponents have contended that a corporation should never be relieved from the consequences of its acts, no matter how innocent and no matter how long ago they occurred. They have said let the "buyer beware."
- Crown Cork & Seal has been dragged into asbestos cases because of its brief association as a successor to a dormant division of a former competitor almost half a century ago. In 1963, Crown spent \$7 million to purchase a majority of the stock of Mundet Cork, a small family-owned manufacturer which made bottle caps, just as Crown did. Before the acquisition, Mundet had a side business making, selling, and installing asbestos and other insulation. By the time of Crown's stock purchase, however, Mundet had shut down its insulation manufacturing operation, and Crown never operated this business. Within three months of Crown's first purchase of Mundet stock, Mundet sold off the assets of the insulation business to an insulation company. Two years later Crown acquired the rest of Mundet's stock and Mundet, now left with only bottle-cap operations, was merged into Crown.
- All of this happened before the first federal asbestos regulations were adopted in 1972 and the filing of large numbers of asbestos personal injury lawsuits that followed soon thereafter.
- There is simply no way that a company such as Crown could have ever foreseen that a \$7 million stock purchase almost fifty years ago would spawn over 300,000 asbestos cases decades later and cost the company more than \$600 million in asbestos-related expenses – even though the company never made or sold an asbestos product in its 100 year history!
- If there was any way for a company such as Crown to have known that a merger almost fifty years ago would threaten the company's solvency today the transaction never would have taken place. This is common sense.

### **Crown's Current Payments Are Not Covered By Insurance**

- Some have asked whether the asbestos-related payments that Crown is now making are covered by insurance. The answer is no. Crown settled insurance coverage litigation related to its asbestos liabilities many years ago and that money has been spent. The cost of the litigation today comes right off of Crown's bottom line.

### **Despite Reporting Profits, Crown's Solvency Is Threatened**

- Opponents have suggested that Crown reported profits in the last quarter, demonstrating that this legislation is not needed. The argument misses the point.
- First, Crown is deserving of relief because the company has already paid out more than \$600 million in asbestos-related payments despite the fact that it never made or sold an asbestos product in its 100 year history. The legislation is needed as a matter of fundamental fairness.
- Also, Crown's credit rating has been reduced to junk-bond status, and the company has been forced to pay higher than prevailing interest rates on its borrowing, imposing on the company an interest penalty of \$100 million each year. This interest penalty plus claims payments have turned an innocent \$7 million bottle-cap acquisition into a nightmare for Crown and its thousands of largely unionized employees.

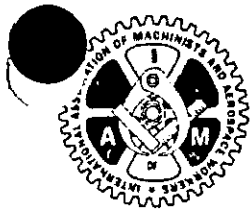
### **The Federal Government Is Not an Adequate or Sound Backstop**

- Some have boldly suggested that it is ok if Crown is forced into bankruptcy because the pensions of the company's retirees will be protected by the federal government.

- The federal Pension Benefit Guaranty Corporation does not fully guarantee workers' pensions. For 2009, the maximum guaranteed amount is \$4,500.00 per month (\$54,000.00 per year) for workers who begin receiving payments at age 65. The maximum guarantee is lower for workers that begin receiving payments before age 65 or if the pension includes benefits for a survivor or other beneficiary.
- Any pension that a worker would otherwise be entitled to above the federal ceiling would be lost if Crown is forced into bankruptcy.
- Furthermore, the burden of funding the federal backstop would fall on ordinary taxpayers. At the time of a soaring federal deficit and great economic challenges facing so many Americans the prospect of paying higher taxes for a potentially preventable burden would not be well received by voters.

### **Hospitals and Schools Will Not Be Affected**

- Opponents have falsely claimed that if the legislation is enacted, hospitals and schools would be forced to incur losses stemming from asbestos removal (abatement), asbestos-related workers' compensation payments, and premises owner liability actions. This scare tactic is unfounded.
- Crown is not aware of any Mundet products in any school or hospital in North Dakota. Most of Mundet's contracts were military related. Crown has never faced a claim from a school or hospital for the costs of asbestos abatement and the lack of claims leads the company to believe that no Mundet products were ever in schools or hospitals.
- Further, Crown is not aware of a single personal injury claim brought by an employee of a school or hospital that would give rise to a claim for subrogation by the school or hospital for workers' compensation payments made to employees.
- Crown is also not aware of any premises liability claims against North Dakota schools or hospitals for Mundet products on their premises.
- Additionally, to help school districts with the expense of removing asbestos products, Congress enacted the Asbestos School Hazard Detection and Control Act of 1980. That law authorized the use of federal funds for local programs to locate and remove asbestos containing products from schools.



**INTERNATIONAL ASSOCIATION of MACHINISTS**  
**and AEROSPACE WORKERS**  
**DISTRICT LODGE No. 160**

AFFILIATED LODGES: 79 - 130 - 239 - 282 - 289 - 297  
695 - 1350 - 1690 - 1735

3516 S. 47TH ST, STE 105  
TACOMA, WASHINGTON 98409  
(253) 472-9692  
FAX (253) 472-9694

DON E. HURSEY, DIRECTING BUSINESS REPRESENTATIVE  
ROBERT JAMES, PRESIDENT  
JOHN W. DECKER, SECRETARY-TREASURER

February 19, 2009

Senator Jeanne Kohl-Welles

RE: SB 5964

I am unable to be present for your hearing on SB 5964 but I want to offer the support of International Association of Machinists and Aerospace Workers District Lodge 160 for your consideration. This legislation would limit the future financial burden on companies like Crown Cork and Seal who have found they are paying significant settlements in asbestos litigation having never produced or sold a single product containing asbestos.

Like everyone, the IAM is saddened for those stricken with asbestos related illnesses. This ongoing burden on our employer limits their ability to be competitive within the industry. Also it has affected the company's ability to maintain industry standard wages and benefits. As the IAM's Business Representative servicing our members working at Crown Cork & Seal in Olympia, Washington I have personal experience with this company having worked in the Olympia facility for 17 years. We have great employees working in a capital intensive, commodity market. Having paid over one half billion dollars in settlements, the ongoing liabilities for the company limit their ability to reinvest and forced their debt to junk bond status, an additional financial penalty paid yearly.

This bill requires that any corporation whose liability arises through a merger or acquisition must have paid out the full current value of the



acquisition in settlement before any relief is available. To our membership it answers the question of when is enough, enough?

History has shown that there are multiple defendants in this type of litigation. Providing relief to a local employer with significant investments in plants and equipment, hundreds of family wage jobs and hundreds more pensioners with health care benefits is an appropriate action for the legislature to consider.

The members of IAM District Lodge 160 ask that you support this legislation.

Thank you,

*Daniel R. Morgan*

Daniel R. Morgan  
Assistant Directing  
Business Representative

---

# Clearing the Fog: Crown Cork & Seal and Statements Made by Former Mundet Employee E.J. Stansbury in 1983

## The Deposition Transcript of E.J. Stansbury

- Some opponents of the bill have indicated that December 16, 1983 deposition testimony of former Mundet employee E.J. Stansbury showed that Crown continued in the business of making or installing asbestos products during the 90 days it owned Mundet's defunct asbestos division almost fifty years ago.
- A review of the entire deposition transcript shows that Mr. Stansbury's recollection of events almost twenty-five years earlier was foggy, at best, and actually contradictory. The Committee should not be misled as to clarity of the statements made by Mr. Stansbury.
- Often, trial lawyers mention only a small section of the transcript on pages 23 and 24, which said:

Page 23

Line	10	A.	I worked with Mundet from 1945 until they sold
	11		their company.
	12	Q.	Who did they sell the company to?
	13	A.	Crown Cork and Seal.
	14	Q.	Now, when Mundet sold to Crown Cork and Seal,
	15		did Mundet employees, that you know of, go to
	16		work for Crown Cork and Seal?
	17	A.	Yes.
	17.	Q.	And did Crown Cork and Seal continue to sell
	18.		Mundet Cork inventory?
	19.	A.	Inventory?
	20	Q.	Yes.
	21.	A.	Yes, for a period of time of about three months. They
	22.		only owned it for about three months.
	23.	Q.	And would this inventory include 85 percent
	24.		magnesia products?

Page 24

Line	1.	A.	Yes.
	2.	Q.	And did Crown Cork and Seal continue in contracting
	3.		insulation after the purchase of Mundet Cork
	4.		company?
	5.	A.	Yes.
	6.	Q.	And did Crown Cork and Seal continue with the
	7.		same warehouses and same offices that were
	8.		previously occupied by Mundet Cork Company?
	9.	A.	Yes.
	10.	Q.	Did Crown Cork and Seal continue using products
	11.		and filling orders of products with the Mundet
	12.		name on them?
	13.	A.	Yes.
	*	*	*
	18.	Q.	Did the 85 percent magnesia products that you
	19.		have described for us today that were manufactured
	20.		and distributed by Mundet Cork Company contain

21. asbestos during the entire period, that you know  
22. of, that you worked for Mundet Cork?  
23. A. Yes.

- What the Committee is often not told was that Mr. Stansbury's essentially recanted this testimony later on in the same deposition. He said:

Page 44

Line 8. Q. Had the Mundet Cork Corporation ceased the  
9. manufacture of asbestos insulation products before  
10. Crown Cork and Seal purchased control of  
11. Mundet Cork Company? I'm not talking about the  
12. distribution, but the manufacture and the  
13. factory in New Jersey that you told us about?  
14. A. *I don't know.* (Emphasis added).  
15. Q. During the period of time when Crown Cork and  
16. Seal owned control of Mundet for those three  
17. months you have told us about at the end of  
18. '63 and early '64, did Crown Cork and Seal run  
19. any assembly line in that factory in New Jersey  
20. making asbestos products?  
21. A. *I do not know.* (Emphasis added).

Page 48

Line 11. Q. Do you know of one single employee of the  
12. contracting insulation division of the Mundet  
13. Cork Company insulation division who went over  
14. and continued some kind of work at Crown Cork  
15. and Seal?  
16. A. *No to my knowledge. I don't know one.* (Emphasis added).

- Mr. Stansbury also testified as follows:

Page 43

Line 7. Q. .... When they sold to Crown Cork and Seal,  
8. was the name Crown Cork and Seal ever put on  
9. the building?  
10. A. No.  
11. Q. Was the name Crown Cork and Seal ever on the  
12. paychecks the employees were issued, or was it  
13. still Mundet?  
14. A. I think it was still Mundet. I really just –  
15. I'll say I don't know.  
\* \* \*  
24. Q. In your office there for your business during  
25. the three months Crown had control of Mundet,

Page 44

Line 1. did you ever get any stationary that said  
2. Crown Cork and Seal?  
3. A. Not to my knowledge.  
4. Q. As far as you known, did they go out and have  
5. any paychecks printed out that said Crown Cork  
6. and Seal on it?  
7. A. No, not to my knowledge.

## Knowledge of Asbestos Hazards

- Questions have also come up regarding Crown's knowledge of asbestos hazards in the early 1960's. Here, Mr. Stansbury's deposition transcript is also illuminating.

Page 35

Line 16. A. First we or I knew about asbestos being hazardous  
17. to health was Silikoff started his experiments.

Page 36

Line 2. Q. Can you tell us approximately the year  
3. Dr. Silikoff published his findings of his  
4. stuffy into asbestos or your best recollection?

5. A. I would say it was published around the early  
6. 70's, late 60's, might have been the early 70's,  
7. '71, somewhere in there.

8. Q. Before that distinction or finding that asbestos  
9. was hazardous, did you yourself know about the  
10. hazards of asbestos until you heard about the  
11. work Dr. Silikoff had done?

12. A. No.

Page 37

Line 23. Q. During the entire period of time you were working  
24. for Mundet, from 1945 until the end of '63, look-  
25. ing at all the worker's compensation claims, did

Page 38

Line 1. one single employee ever have a shortness of  
2. breath or anything like that, saw any  
3. kind of claim through your worker's compensation  
4. program?

5. A. Not to my knowledge.

Page 39

Line 7. Q. One of these lawyers was earlier asking you  
8. who you were working for when you first heard  
9. that asbestos exposure might be harmful to your  
10. health, and you said you might have been working  
11. for Mundet. Can we pin that down to when Dr.  
12. Silikoff published his experiments, is that  
13. when you first heard of it?

14. A. Yes.

15. Mr. Budd: He already said he  
16. heard about it in 1970.

17. A. 1970, end of the 70's.

Page 40

Line 2. Q. In any event, if these years are right, you  
3. certainly did not hear of any of Dr. Silikoff's  
4. work between 1945 and 1963 which was some years  
5. before it had been published?

6. A. That's correct.

7. Q. And during this period of time between 1945  
8. and 1963, did you know anything at all about  
9. the health hazards of asbestos?

10. Mr. Weber: As they pertain to

11. workers using insulation
12. products containing asbestos.
13. (blank)
14. By Mr. Harmon:
15. Q. Did you know about any such dangers?
16. A. No.

#### **What Else Haven't You Been Told By Opponents?**

- Minutes of a Mundet Board of Directors meeting held on September 25, 1963, filed with the Federal Trade Commission, indicate that "*A report was made that the Magnesia Plant was shutdown because of a lack of sales volume.*" It was noted that this would result in a reduction of inventory as orders were filled from stock." (Emphasis added). The FTC filing supports Crown's statements that the Mundet asbestos making operations were shut down before the merger of the two companies.

6853

JAN 10 1984

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO AND AUSTIN DIVISIONS

ARTY A. HAWKINS, ET. UX. I  
VS. I  
FIBREBOARD CORPORATION, I  
ET. AL. I

CCS

DEPOSITION OF  
E.J. STANSBURY

COPY

taken on the 16th day of December, 1983, in the offices  
of Mr. Richard Mithoff, 3450 One Allen Center,  
Houston, Harris County, Texas, between the hours of  
1:40 p.m. and 3:40 p.m., pursuant to the Federal  
Rules of Civil Procedure.

1 A Just dust.

2 Q What percentage of insulators working on these  
3 jobs would take advantage and wear these masks  
4 that they made available on the jobs?

5 A I couldn't tell you.

6 Q Was it a large number or a small number?

7 A A small number.

8 Q You have told Mr. Budd that the first time  
9 you ever knew that exposure to asbestos could be  
10 hazardous was some kind of work the union was  
11 sponsoring that had come out; is that correct,  
12 sir?

13 A Correct.

14 Q Can you tell us what kind of work you're talking  
15 about?

16 A First we or I knew about asbestos being hazardous  
17 to health was Silikoff started his experiments.

18 Q Yes, sir. Did you know about Silikoff's  
19 experiments when he was actually conducting  
20 the experiments or --

21 A I knew of him, but it was quite a while before  
22 they came out with the facts on it.

23 Q Did you know about the facts or the dangers of  
24 exposure to asbestos before Dr. Silikoff came  
25 out with those facts?

1 A No.

2 Q Can you tell us approximately the year  
3 Dr. Silikoff published the findings of his  
4 study into asbestos or your best recollection?

5 A I would say it was published around the early  
6 70's, late 60's, might have been early 70's,  
7 '71, somewhere in there.

8 Q Before that distinction or finding that asbestos  
9 was hazardous, did you yourself know about the  
10 hazards of asbestos until you heard about the  
11 work Dr. Silikoff had done?

12 A No.

13 Q While you basically were very active in Mundet  
14 Cork Company from 1945 until it shut down, I  
15 believe, in February of '64, that was the  
16 date that you have? Do you have any quarrel with  
17 that, sir?

18 A No.

19 Q Does that date sound about right to you?

20 A That sounds about right.

21 Q During that period of time, did the Mundet  
22 Cork Company have worker's compensation insurance  
23 that covered its employees who were working as  
24 insulators and in other capacities in the State  
25 of Texas?



1 A Yes.

2 Q Did it have that worker's compensation insurance  
3 for the entire period of time from 1945, the  
4 whole time you worked for them?

5 A Yes.

6 Q And were you active in handling the paperwork  
7 when a worker got injured and would turn in a  
8 worker's compensation claim?

9 A Actually, I saw it but I didn't actually fix it.  
10 We had a office manager that did. They came  
11 across my desk.

12 Q But you would see them?

13 A I saw them.

14 Q During the period of time you were working  
15 for Mundet from 1945 to the end of '63 or beginning  
16 of '64 or whatever date it was, did you see one  
17 single claim by any employee claiming he had  
18 developed some kind of a disease or had a lung  
19 problem or shortness of breath because he had  
20 been working around the dust that was involved in  
21 in the insulation industry?

22 A Come back with your dates.

23 Q During the entire period of time you were working  
24 for Mundet, from 1945 until the end of '63, look-  
25 ing at all the worker's compensation claims, did

1 one single employee ever have a shortness of  
2 breath problem or anything like that, saw any  
3 kind of claim through your worker's compensation  
4 program?

5 A Not to my knowledge.

6 Q Now, sir, if I were to tell you that Dr. Silikoff  
7 did not publish his work until -- maybe some  
8 of the lawyers here will correct me, if I under-  
9 stand it, it was in December of '64.

10 MR. WEBER: '65.

11 BY MR. HARMON:

12 Q '65. Did you ever hear about Dr. Silikoff's  
13 work before it was published in December of  
14 1965, if that's the correct date?

15 A I had heard of his experiments but not of his  
16 publication.

17 Q Well, I think, you heard that he had done work;  
18 is that correct?

19 A Yes.

20 Q You never read personally any publication; is  
21 that correct?

22 A No, sir.

23 Q Did you hear about his experiments when all this  
24 stuff hit the newspaper and hit the industry,  
25 both the union and your organizations, the

1 contractors; or was that the first time you  
2 heard about it?

3 A Yes.

4 Q And can you tell me who you were working for in  
5 1965?

6 A ~~Baron Erhart Hill~~  
Baron Erhart Hill.

7 Q One of these lawyers was earlier asking you  
8 who you were working for when you first heard  
9 that asbestos exposure might be harmful to your  
10 health, and you said you might have been working  
11 for Mundet. Can we pin that down to when Dr.  
12 Silikoff published his experiments, is that  
13 when you first heard about it?

14 A Yes.

15 MR. BUDD: He already said he  
16 heard about it in 1970.

17 A 1970, end of the 70's.

18 BY MR. HARMON:

19 Q You said you were guessing as to the year, but  
20 the first time you ever heard it was when it  
21 hit the newspaper and hit your industry and  
22 hit the union; is that correct, sir?

23 A That's what I said.

24 Q You're just guessing as to the years; is that  
25 correct, sir?

1 A Yes, sir.

2 Q In any event, if these years are right, you  
3 certainly did not hear of any of Dr. Silikoff's  
4 work between 1945 and 1963 which was some years  
5 before it had been published?

6 A That's correct.

7 Q And during this period of time between 1945  
8 and 1963, did you know anything at all about  
9 the health hazards of asbestos?

10 MR. WEBER: As they pertain to  
11 workers using insulation  
12 products containing asbestos.  
13

14 BY MR. HARMON:

15 Q Did you know about any such dangers?

16 A No.

17 Q Did you work around these products yourself?

18 A Actual application, no. I was on the jobs  
19 where the people that worked for me was applying  
20 them. I was in the warehouse where we had  
21 them stored.

22 Q Yes, sir.

23 A And where we had them graded and so forth  
24 and so on, but actually applying, no.

25 Q But you were around the products when the workers

1 A Yes. I don't know the exact number of years.  
2 Q Well, when did Mundet shut down?  
3 A Now, what do you mean shut down?  
4 Q Well, when they shut down the business, did  
5 they stop using the Mundet name?  
6 A When they sold to Crown Cork and Seal?  
7 Q Yes, sir. When they sold to Crown Cork and Seal,  
8 was the name Crown Cork and Seal ever put on  
9 the building?  
10 A No.  
11 Q Was the name Crown Cork and Seal ever on the  
12 paychecks the employees were issued, or was it  
13 still Mundet?  
14 A I think it was still Mundet. I really just --  
15 I'll say I don't know.  
16 Q Do you know really when you say Crown Cork and  
17 Seal bought Mundet, do you really know what  
18 the nature of that transaction was?  
19 Did they buy stock in the corporation,  
20 the Mundet Corporation's independent existence,  
21 or do you know, were you privy to all of that?  
22 A I was not privileged to all of that. That was  
23 all handled in the North.  
24 Q In your office there for your business during  
25 the three months Crown had control of Mundet,

1 did you ever get any stationery that said  
2 Crown Cork and Seal?

3 A Not to my knowledge.

4 Q As far as you know, did they go out and have  
5 any paychecks printed out that said Crown Cork  
6 and Seal on it?

7 A No, not to my knowledge.

8 Q Had the Mundet Cork Corporation ceased the  
9 manufacture of asbestos insulation products before  
10 Crown Cork and Seal purchased control of  
11 Mundet Cork Company? I'm not talking about the  
12 distribution, but the manufacture and the  
13 factory in New Jersey that you told us about?

14 A I don't know.

15 Q During the period of time when Crown Cork and  
16 Seal owned control of Mundet for those three  
17 months you have told us about at the end of  
18 '63 and early '64, did Crown Cork and Seal run  
19 any assembly line in that factory in New Jersey  
20 making asbestos products?

21 A I do not know.

22 Q From whom would you buy your products during  
23 this period of time, sir?

24 MR. TAYLOR: I object. You  
25 haven't defined, "you."

1 anything to do with the actual sale, how they  
2 sold it, that would be up to the owners of  
3 both sides, the purchaser and the seller and  
4 their attorneys to decide what would be  
5 disbursed, the paperwork and who got it and  
6 what happened or took liability for it maybe,  
7 you don't know about that; is that right?

8 A I do not know.

9 Q What I'm asking about is if you know about  
10 it, if you don't know, I know you can't tell us.  
11 Do you know of one single employee of the  
12 contracting insulation division of the Mundet  
13 Cork Company insulation division who went over  
14 and continued some kind of work at Crown Cork  
15 and Seal?

16 A Not to my knowledge. I don't know one.

17 Q Where did they all go to, to your knowledge?  
18 Who did they go to work for, to your knowledge?

19 A Baron Erbert Hill.

20 Q Now, you stayed with Baron Erbert Hill for  
21 a number of years, did you not, sir?

22 A Yes, sir.

23 Q How long did you stay with Baron Erbert Hill?

24 A Until they sold to Kean.

25 Q What year would that have been, more or less?

FEDERAL TRADE COMMISSION	
Docket No. <u>8687</u>	COMMISSION Exhibit No. <u>42</u>
RESPONDENT	
In the Matter of: <u>Commonwealth Seal</u>	
Date <u>9/13/63</u> Witness _____	Reporter <u>W.P.</u>

MEETING - Directors', Regular  
 PLACE - North Bergen Office.  
 TIME - Wednesday, September 25, 1963,  
 10:30 A.M.

The meeting was called to order at 11:45 A.M.

Mrs. Joseph Mandet presided.

All Directors were present.

Copies of the minutes of the August 28, 1963 Directors' meeting were previously distributed, and on motion duly made and seconded the minutes were unanimously approved.

-0-

The Financial Statement for August 1963 was reviewed and a general discussion followed. A report was made that the bank balance was currently in excess of \$1 million.

-0-

Samples of a removable clear plastic liner were presented which were still in the development stage. Non-removable samples were also shown.

-0-

A report was made that the New Orleans Branch would be closed out by the end of the month with stock transferred to the public warehouse and a reduction of the inventory from 750M gross to 400M gross.

-0-

A general discussion followed on the Danville Plant. Mr. Stier agreed to inspect the facilities and offer recommendations. Mr. Windle stated that he felt the plant was poorly conceived and if such were the case it may be necessary to consider the acquisition of another company in a similar line, or consider the sale of the operation. He stated that this did not alter the recommendation to purchase the plant.

-0-

A report was submitted to the Board that the option to purchase the Danville Plant was exercised on September 4, 1963 providing for a \$95,000 earnest money deposit, \$35,000 additional payment on closing title, and the balance of \$250,000 under a twenty-five (25) month purchase money mortgage at 5½% interest per annum.

-0-

A general report was made regarding personnel changes. John W. Wiley was engaged as Director of Manufacturing. Thomas H. McElrath was appointed Controller to replace Carl G. Schiesz. Resignations of William Berghorn, Casket Manufacturing Manager, and James Scully, Credit Manager were anticipated. Additional employees were being sought principally in Sales and Industrial Engineering. It was the



sense of the meeting that a profile be furnished to the Board on new employees in key positions.

-0-

A report was made that the Magnesia Plant was shutdown because of lack of sales volume. It was noted this would result in a reduction of inventory as orders were filled from stock.

-0-

A report was submitted to the Board on Project Authorizations #NB-436A through #NB-438 which were approved by the President pursuant to authority granted. Reports recommending an expenditure of \$16,340 for the purchase of a Sacmi Spotting Machine and \$61,000 for the installation of a Scrap-Cork Grinding Mill were submitted to the Board. On motion duly made and seconded the expenditures were authorized. It was the sense of the meeting that the President determine added costs to provide the new grinding equipment in lieu of transferring old equipment from Hillside and that if in his discretion such additional cost was nominal and advisable that he proceed on that basis.

-0-

A general report was made on the status of labor negotiations with respect to the contract expiring October 1, 1963. Mr. Mitchell, Director of Personnel, was invited to attend the meeting and provided a more detailed report.

-0-

Mr. Loudon advised that he might be of assistance in moving Polystyrene inventory at Hillside. It was the sense of the meeting that a detailed inventory be provided to Mr. Loudon for this purpose.

-0-

A report was made to the Board regarding travel accident insurance, increased fidelity insurance, and reduced fire insurance.

-0-

Mr. Windle advised that in about thirty to sixty days a proposal would be submitted to the Board which would re-design the system of handling funds and disbursements including the use of facsimile signatures and that this was one of the reasons for the increased fidelity insurance.

-0-

After a lengthy discussion, the Board agreed in principle, subject to advice of counsel, to approve the repurchase of stock for an amount and price to be determined at a later date, and authority was granted to the proper officers to contact the appropriate financial institutions with respect to the Loan Agreement.

-0-

A report was made that the Wolff Injection Molding machine had been sold through Mundet Canada and that this Company had been reimbursed for the major part of its investment with the Mundet Cork & Insulation Company guaranteeing reimbursement of the balance.

-0-

The meeting was adjourned at 2:30 P.M.

B. Knudsen  
Assistant Secretary



# ND AFL-CIO LEGISLATIVE NEWS

David Kemnitz, President . . . . .

ND AFL-CIO Phone 701-223-0784 • FAX 701-223-9387 • Email [ndaflcio@ndaflcio.org](mailto:ndaflcio@ndaflcio.org)

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ND AFL-CIO

DAVID L. KEMNITZ; PRESIDENT

SENATE I,B&L COMMITTEE

MARCH 4, 2009

SUBJECT: HB 1430 ASBESTOS-RELATED LIABILITIES

The ND AFL-CIO on behalf of its members and all workers in North Dakota who may or have had exposure to asbestos respectfully request a NO vote on HB 1430.

Respectfully and Sincerely;

  
David L. Kemnitz, President  
ND AFL-CIO

North Dakota Building and Construction Trades Council

Testimony in opposition to HB 1430

Successor Corporation Asbestos-related Liabilities

Wednesday, March 4<sup>th</sup>, 2009

Chairman Klein and members of the Senate Industry Business and Labor, and Judiciary Committees for the record, my name is Renee Pfenning. I am appearing here today on behalf of the North Dakota Building and Construction Trades Council, and the North Dakota Electrical Workers Council in opposition to HB 1430.

We have members with asbestos-related diseases; we have members that have passed away from asbestos related diseases and mesothelioma. I respectfully ask for a DO NOT PASS recommendation on HB 1430.

North Dakota Building and Construction Trades Council  
North Dakota Electrical Workers Council

  
Renee Pfenning

Practically overnight the Stewarts found themselves robbed of their job security—a story that is becoming all too familiar across America. Of the nearly 1.9 million jobs that have vanished since the recession began in late 2007, more than 600,000 belonged to people in manufacturing, many of whom were in their final, peak-earning years. That caps a decade in which 4 million factory workers watched their jobs evaporate, many because of imports and the relocation of U.S. factories overseas. “We’ve never seen such a protracted downturn in manufacturing in modern history,” says Bob Baugh, executive director of the AFL-CIO Industrial Union Council. And it’s not over yet: the Economic Forecasting Center at Georgia State University predicts Americans could lose 1.1 million industrial jobs in the next 12 to 15 months. “Nobody knows where the bottom is,” says Robert Scott, an economist at the Economic Policy Institute in Washington, D.C.

The situation is particularly distressing for older workers, who are bearing the brunt of these job losses. According to U.S. Department of Labor statistics, more than half of recent plant-closing victims are 45 or older. By contrast, the majority of factory workers who are still employed are under 43.

“These are people with 20, 30, 40 years working in manufacturing jobs,” says Lynn Minick, a workforce-development specialist at the National Employment Law Project in Indianapolis. “They believed these were going to be the jobs they would retire from.”

## JOB RESOURCES AND MORE

causing many older workers to postpone retirement—or return to the workforce. Others have been laid off or are worried about the future. If you’re looking for full- or part-time work, you can find timely resources and advice at [aarpmagazine.org/money](http://aarpmagazine.org/money), including:

- **WHERE THE JOBS ARE** Discover which industries are still hiring and where employment prospects are holding up best.
- **HOW TO GET A JOB** Check out AARP’s free job site, with thousands of positions from all over the country. You’ll also find a listing of the best employers for 50-plus workers.
- **WHICH TACTICS WORK BEST** Get tips on résumé writing and interviewing, plus practical articles such as “Working From Home—Beware the Hoaxes.”

## HOW SAFE IS YOUR PENSION?

**EVEN IF YOUR COMPANY FILES FOR BANKRUPTCY**, you’ll receive your company pension. But it may not be every penny you expected.

In the United States every defined-benefit retirement plan is insured. When a company files for bankruptcy, it chooses between two paths. It can pursue liquidation if there really is no hope of salvaging the business, or it can file for reorganization and try to stay alive by slashing costs and attracting new investors. The pension plan is always terminated in liquidation and usually in reorganization. That’s when the Pension Benefit Guaranty Corporation ([pbgc.gov](http://pbgc.gov)), a federal insurance agency, takes over the pension payments. Only employees with the largest pensions take a hit: the PBGC’s maximum annual payment, which rises with inflation, is \$54,000 this year for workers who retire at age 65. Like any insurer, the PBGC has restrictions. For instance, it prorates recent pension increases. But in all, 84 percent of retirees get their full pension.

In rare cases an employer maintains its pension plan during reorganization. That generally happens for one of three reasons: the benefit is low; employee turnover is high; or the pension plan is new.

Of course, it’s better for a company to avoid bankruptcy altogether. Congress gave some help in this direction in December by relaxing the 2006 Pension Protection Act’s strict rules governing pension funding. Counterintuitive as it seems, this move is one that endangered workers should embrace. “Given the economic downturn, employees are better off than if the company was forced to make a large pension contribution,” says Dallas Salisbury, president of the nonpartisan Employee Benefit Research Institute. “It’s better to stay in business than make a contribution.” —*Fran Hawthorne, author of Pension Dumping (Bloomberg Press, 2008).*

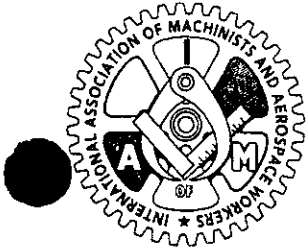
As factories close and jobs disappear, older workers and retirees are being stripped of hard-earned benefits; working families are being thrown into turmoil. And yet amid the tales of loss and anxiety are occasional stories of hope. While many older workers are struggling to survive, others, such as Sally Stewart, who is now studying to become a medical

assistant, have learned new skills—and are doggedly forging new lives.

**Older manufacturing workers** who lose their jobs are less likely than their younger colleagues to find new ones. Their skills, developed over decades, don’t always transfer away from the assembly line. “By the time you’re an older worker, you’re a fully formed commodity,” says Alicia Munnell, director of the Center for Retirement Research at Boston College. “You have specific skills and history, and it’s harder to find a match.”

Indeed, a 2004 study by John Schmitt, an economist at the Center for Economic and Policy Research in Washington, D.C., found that 24 percent of men and 34 percent of women between 55 and 64 drop out of the labor force entirely after layoffs. And because they have more emotional and financial ties to their communities, it can be harder for

(CONTINUED ON PAGE 74)



International Association of Machinists and Aerospace Workers

Local Lodge 2525

3002 First Avenue North, Fargo ND 58102

Phone/Fax: 701-237-0171

[www.iamdistrict5.org/LL2525](http://www.iamdistrict5.org/LL2525)

February 28, 2009

Senate Judiciary Committee:

Senate Industry, Business and Labor:

I am here representing the International Association of Machinists and Aerospace Workers, Local Lodge 2525 Fargo, ND. We have members in Minot, Rugby, Grand Forks and Bismarck. I am here to ask you to oppose House Bill 1430.

Thank you,

A handwritten signature in cursive script, appearing to read 'Steve Allard'.

Steve Allard  
Recording Secretary



NORTH DAKOTA ASSOCIATION FOR

**JUSTICE**

Phone: (701) 663-3916

P.O. BOX 365, MANDAN, ND 58554

E-mail: [info@ndaj.org](mailto:info@ndaj.org)

HB 1480

Testimony on behalf of the NDAJ

March 4<sup>th</sup>, 2009

There are several points that are important when considering this legislation that for all practical purposes relieves one company from their responsibilities and places that responsibility and costs on the citizens of North Dakota.

1. Statements have been made that without this bill Crown Cork & Seal is threatened with bankruptcy and bankruptcy would negatively impact 12 unknown people in North Dakota. However their financial statements show a company that is a thriving multinational conglomerate and is growing; even in 2008, their sales have increased. Their net profits over the past 3 years were:

\$309 Million in 2006

\$528 Million in 2007

\$226 Million in 2008

A net income of over \$1 Billion Dollars over the past 3 years is an indicator of their success, not of a company on the verge of bankruptcy.

2. The company in their annual report Crown lists 24 risk factors that may have an impact on their future, asbestos liability is one of those risk factors but it barely makes the top 10 as listed in their 2008 annual report or in their 2008 10-K report to the SEC.

Substantial indebtedness, interest rates, foreign exchange rates, energy and raw material prices and their ability to incur more debt are ranked higher than asbestos claims.

3. On pages 59-60 in the Notes to the Consolidated Statements of Operations in the 10-K report filed February 2, 2009 they state:

**"While it is not possible to predict the ultimate outcome of asbestos-related claims and settlements, the Company believes that resolution of these matters is not expected to have a material adverse effect on the Company's financial position."** Form 10-K filed Feb, 2-2009. Pages 59-60 Notes to the Consolidated Statement of Operations.

This statement filed with the SEC is different from the testimony given during the House hearing in January.

4. The testimony given today indicates that this bill will affect North Dakota citizens; in that they are completely right. We know that it will impact the school districts in Grand Forks, Grafton, Hatton, Mandaree, Pembina, Wilton, Fargo and perhaps many more that have Mundet asbestos in their buildings. It is in government buildings and hospitals.

HB 1430 will shift the responsibility from a multi-million dollar company to local school districts, other governmental and private business that have their product in their buildings. It shifts the responsibility and the costs to North Dakota citizens who are truly innocent as it relates to asbestos claims.



ORIGINAL

**Written Testimony and Legal Brief of  
David C. Thompson, P.C.,<sup>1</sup>  
North Dakota House Bill No. 1430**

**The so-called "Innocent Successor Liability Act"  
Hearing March 6, 2009 at 1:00 p.m. before a joint session of  
Senate Industry, Business and Labor and Judiciary Committees**

Thank you for allowing me to testify today on behalf of North Dakota Asbestos Disease Victims – those who will have no remedy against a company which is legally responsible for asbestos products in many North Dakota public and private buildings if HB 1430 is enacted.

The proponents of this bill – including the Pennsylvania corporation Crown Cork & Seal itself – and the American Legislative Exchange Council (ALEC) – have today characterized Crown Cork & Seal as a so-called "Innocent Asbestos Defendant."

However, for those reasons which I will address in a moment - Crown Cork & Seal is anything but "innocent." To the contrary – House Bill 1430 is nothing more than a request by Crown Cork & Seal to have the North Dakota Legislative Assembly give it a "bail out" – from what Crown now considers to have been a bad deal that Crown itself knowingly made back in the 1960's with a company known as Mundet Cork – which manufactured asbestos-containing insulation products.

At the time that Crown Cork & Seal entered into its series of transactions with Mundet Cork during the years 1963, 1964 and 1966 – Mundet Cork had had active and pending asbestos personal injury claims against it dating back at least to the year 1954. *See, the legal documents evidencing these asbestos personal injury claims pending against Mundet Cork dating back to the early-mid*

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<sup>1</sup> David C. Thompson, P.C., a North Dakota Professional Corporation, is a one-lawyer law firm, based in Grand Forks, North Dakota. The principal in this firm – attorney David C. Thompson – has represented victims of asbestos-caused diseases in personal injury and wrongful death actions venued in North Dakota state and federal courts since June of 1984.

1950's, attached hereto together as **Exhibit 12**.

Furthermore – and contrary to the representations which have been made to this committee today by proponents on House Bill 1430 today – Crown Cork & Seal itself operated the asbestos insulation distribution and contracting business of its predecessor Mundet Cork until Crown sold off that insulation business. *See, the deposition testimony of former Mundet Cork [and Crown Cork & Seal] employee E. J. Stansbury on December 16, 1983, included within Exhibit 12 hereto.*

In addition, Mundet Cork had at least one full-time distributor and installer of its asbestos-containing insulation products – Building Sprinkler Company of Fargo – and we know from Building Sprinkler's records that Mundet Cork-manufactured asbestos insulation products have been installed – and remain today – in numerous specific hospital and school buildings, industrial plants, Air Force bases, and other facilities – throughout North Dakota. We are willing to provide this specific information to the committee if it should desire it.

By way of legislative procedural history, House Bill 1430 was heard and considered by the House Judiciary Committee, and was given a “do pass” by that committee on February 5, 2009, by a vote of 7 “yeas” to 6 “nays.” The bill subsequently passed the House of Representatives on February 11, 2009, by a vote of 53 to 41, although it should be noted that one member of the House Judiciary Committee who has been part of the majority in that committee's 7-6 “do pass” vote ended up voting against the bill on the House floor. Therefore, if one would count the number of House Judiciary Committee members who ultimately voted against House Bill 1430 – the margin would have been 7 to 6 “do not pass.”

**Firstly, it should be made clear that North Dakota House Bill 1430 does not benefit any North Dakota business – and House Bill 1430 does not benefit any North Dakota employer.**

In addition, it should be noted that North Dakota House Bill 1430 is substantively identical to Virginia House Bill 1762, which was defeated on January 22, 2009, by the Virginia House Commerce and Labor Committee – which has a Republican majority – obviously in that which was a bi-partisan vote.

Conversely, House Bill 1430 is significantly different from – and is more extreme – than the somewhat similar bills which are currently making their way through the South Dakota, Indiana and Washington legislatures, because the corresponding bills in these latter three jurisdictions – *unlike House Bill 1430* – do not propose to immunize so-called “successor” corporations from liability to asbestos disease victims for pre-January 1, 1972 acquisition transactions – where the “successor” company was not “innocent” – because the acquiring company had continued to itself manufacture, install or sell asbestos-containing products after that date. North Dakota House Bill 1430 does propose to provide this sweeping immunity to successor companies which are not “innocent.”<sup>2</sup>

Even the handful (*about seven*) jurisdictions which had large Crown Cork and Seal manufacturing operations within their borders – and have passed generally similar legislation over the past several years or so – have never even attempted to grant immunity from liability to companies which had continued to manufacture or sell asbestos products after they had acquired the predecessor company.

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<sup>2</sup> The other bills which are currently pending in other legislatures are the following: South Dakota House Bill 1203 (*now before the South Dakota Senate*); Washington Senate Bill 5964 (*now before the Washington House*); and Indiana Senate Bill 469 (*now pending before the Indiana House*).

Significantly, however, unlike North Dakota House Bill 1430, all three of these other contemporary bills except from the definition of “innocent successor corporation” “a corporation that, after a merger, a consolidation, or the exercise of control or the ownership of stock of the corporation before the merger or consolidation, continues in the business of: (1) mining asbestos; (2) selling or distributing asbestos fibers; or (3) manufacturing, distributing, removing, or installing asbestos containing products that are the same, or substantially the same, as those products previously manufactured, distributed, removed, or installed by the transferor corporation.” (emphasis added). See, e.g., Indiana Senate Bill 469, at Section 3(c)(1-3).

The proponents of House Bill 1430 claim that it is designed to help Crown Cork & Seal Company *only* – because Crown Cork & Seal, according to the American Legislative Exchange Council (ALEC), which drafted House Bill 1430 – was supposedly an “innocent” successor.

But these proponents of the bill are now asking the North Dakota Legislative Assembly for something which they have not received from any other jurisdiction – namely for House Bill 1430 to grant to a successor corporation immunity from liability to asbestos disease victims *even if that successor corporation itself continued to itself manufacture or sell asbestos products after a pre January 1, 1972 acquisition transaction.*

Why would Crown Cork & Seal change its strategy here in North Dakota? I believe that the answer to this question can be found in an incident which occurred less than two months ago.

Shortly after the Virginia House Commerce and Labor Committee had defeated Virginia House Bill 1762 on January 22, 2009 by a bi-partisan 14-8 vote – Crown Cork and Seal and its allies with the American Legislative Exchange Council (ALEC) began maneuvering to have that committee “reconsider” this vote – but that effort collapsed, when *documentation was presented to the House committee which demonstrated that Crown and ALEC had been misrepresenting facts about Crown’s post-transaction involvement with asbestos products.* See, attached hereto, and incorporated wholly herein by reference, the correspondence dated January 23, 2009, to the Virginia House Delegate Benjamin L. Cline, and an excerpt of the December 16, 1983, deposition of E. J. Stansbury, said documents being included together as **Exhibit 11**.

In fact, this communication to the Virginia House Committee on Commerce and Labor was accompanied by a transcript of a deposition which had been taken back on December 16, 1983, of a man named *E. J. Stansbury – who had been employed by Crown predecessor Mundet Cork beginning in 1945 – and continued to be employed in the asbestos insulation business by Crown*

*Cork & Seal after Crown had acquired Mundet in 1963. Id.*

As this Virginia House committee was informed on January 23, 2009:

January 23, 2009

The Honorable Benjamin L. Cline  
Virginia House of Delegates  
P. O. Box 406  
Richmond, VA 23218

Dear Delegate Cline:

Re: House Bill 1762 Relating to Asbestos-Related Liabilities  
of Successor Corporations

I have received information today regarding Crown Cork & Seal which I believe to be important, of which I wanted to make you aware. As you know, Crown Cork has always made the argument that they were never involved in the manufacture or sale of asbestos products and, therefore, they are different than any other company (such as Owens-Illinois) that did manufacture and sell such products.

I have enclosed an excerpt from the deposition from E. J. Stansbury which was taken in Texas on December 16, 1983. Mr. Stansbury was employed by Mundet Cork in 1945 and was still employed by Mundet Cork at the time of its purchase by Crown Cork & Seal in 1963. He worked for Crown Cork & Seal for 3 months until its insulation division was sold to another corporation. Mr. Stansbury testified on pages 23-24 as follows:

Page 23

Line	10	A.	I worked with Mundet from 1945 until they sold
	11		their company.
	12	Q.	Who did they sell the company to?
	13	A.	Crown Cork and Seal.
	14	Q.	Now, when Mundet sold to Crown Cork and Seal,
	15		Did Mundet employees, that you know of go to
	16		work for Crown Cork and Seal?
	17	A.	Yes.
	18	Q.	And did Crown Cork and Seal continue to sell
	19		Mundet Cork inventory?
	20	A.	Inventory?
	21	Q.	Yes.
	22	A.	Yes, for a period of about three months. They
	23		only owned it for about three months.

24 Q. And would this inventory include 85 percent  
25 magnesia products?

Page 24

1 A. Yes.  
2 Q. And did Crown Cork and Seal continue contracting  
3 insulation after the purchase of Mundet Cork  
4 Company?  
5 A. Yes.  
6 Q. And did Crown Cork and Seal continue with the  
7 same warehouses and same offices that were  
8 previously occupied by Mundet Cork Company?  
9 A. Yes.  
10 Q. Did Crown Cork and Seal continue using products  
11 and filling orders of products with the Mundet  
12 name on them?  
13 A. Yes.

\* \* \*

18 Q. Did the 85 percent magnesia products that you  
19 have described for us today that were manufactured  
20 and distributed by Mundet Cork Company contain  
21 asbestos during the entire period, that you know  
22 of, that you worked for Mundet Cork?  
23 A. Yes.

**As you can see, Mundet did sell asbestos insulation during the 3 months that it owned the insulation division of Mundet Cork. This is contrary to the representations that they have always made to members of the committee.**

Very truly yours,

PATTEN, WORNOM, HATTEN &  
DIAMONSTEIN, P.C.

Donald N. Patten

DNP/jk

*(bold emphasis added)*

Therefore, it is beyond clear that Crown Cork & Seal clearly has been aware of these facts

for almost a quarter century – given the fact that the above-referenced deposition of former Mundet Cork [*and former Crown Cork & Seal*] employee E. J. Stansbury was reported back on December 16, 1983 - in an asbestos-related personal injury case in which Crown was a defendant – *and where Crown lawyer Frank Harmon was in attendance at this deposition on that day some 24 years ago.* See, attached hereto, and incorporated wholly herein by reference, the correspondence dated January 23, 2009, to the Virginia House Delegate Benjamin L. Cline, and an excerpt of the December 16, 1983, deposition of E. J. Stansbury, said documents being included together as **Exhibit 11.**

Notwithstanding this evidence – *Washington, D.C. lawyer Mark Behrens* - who is registered as a lobbyist for *both* Crown Cork & Seal, and for the American Legislative Exchange Council (ALEC), during the current legislative session – made the following *seriously false statement in his written and oral testimony before the House Judiciary Committee on January 27, 2009, in support of House Bill 1430:*

*\* “Crown never manufactured, sold, or installed a single asbestos-containing product in the company’s 100-year history.”* See, e.g., numbered page 2 of the written “Testimony of Mark Behrens, Esq., Shook, Hardy & Bacon, L.L.P., On Behalf of the American Legislative Exchange Council In Support of House Bill 1430, An Act Concerning Successor Asbestos-Related Liability Before the North Dakota House Judiciary Committee, January 27, 2009”, as filed with the House Judiciary Committee, a relevant excerpt of which document being attached hereto, and incorporated herein, as **Exhibit 11-A.**

The efforts in Virginia were begun last year -- when lobbyists associated primarily with company known as Crown Holdings, Inc. -- *the parent of a corporation known as Crown Cork & Seal* -- sought to introduce a bill virtually identical in language to North Dakota House Bill 1430.

That earlier Virginia bill met with substantial opposition -- *and was never offered*. Crown Holdings continued working in the shadows, and on January 14, 2009, offered in Virginia a substantially identical bill – the above-mentioned, now-defeated House Bill No. 1762 -- which is being touted as a “reform for innocent asbestos defendants.” *[It should be noted that neither Crown Holdings, Inc., nor Crown Cork & Seal Company, Inc. -- both Pennsylvania corporations -- are registered or licensed by the North Dakota Secretary of State to do business here in North Dakota].*

In fact – Crown Cork & Seal Company, Inc. – a Pennsylvania Corporation – has had nothing to do with the State of North Dakota, ever since October 24, 1997, when Crown filed its application with the North Dakota Secretary of State “for a Certificate of Withdrawal from the State of North Dakota” -- in which document Crown certified in a verified statement:: (1) that Crown was “not transacting business in the State of North Dakota”; and (2) that Crown “hereby surrenders its authority to transact business in the State of North Dakota.” *See, the document “Application for Certificate of Withdrawal”, filed by Crown Cork & Seal Company, Inc. with the North Dakota Secretary of State on October 24, 1997, a copy of which document being attached hereto, and incorporated herein, as Exhibit 11-B.*

Like its identical Virginia twin – North Dakota House Bill 1430 is unconstitutional special legislation, which benefits a single corporation, and retroactively deprives victims of asbestos disease of substantive property rights, and it will ultimately have ripple effects which will throw settled contract and corporate law expectations into a condition of unpredictable flux.

Crown Cork and Seal and its lobbyists have claimed that this bill will help the Company’s corporate bond rating. But the truth is – passing this bill in North Dakota -- or in South Dakota -- or in any other American jurisdiction -- will do **nothing** for Crown’s bond rating -- so as long as the other forty or so other jurisdictions in this country do not have such legislation.



Crown's lobbyists in Virginia also threatened that continuing to allow litigation against Crown in that state will supposedly throw Crown into dire economic straights -- and will result in lost *Virginia* jobs. Even that is apparently a false claim. The truth is that Crown certified to the federal Securities Exchange Commission (SEC) in 2007 that it made \$7.7 billion in net sales for that year, 75% of which came from overseas markets. It also certified that its *total forecast for pending and future asbestos costs* for the entire company was \$100 million less than the interest *for a single year* on its corporate debt instruments.

**Either way, it is beyond dispute that Crown Cork & Seal – and its parent company Crown Holdings, Inc. – are Pennsylvania corporations which are not licensed to do business in North Dakota – and which do not have any manufacturing, distribution or sales business operations in this state.**

In testimony before the House Judiciary Committee on January 27, 2009, in support of House Bill 1430 – Crown and ALEC lobbyist Mark Behrens claimed that Crown had some 14 or so pensioners living in North Dakota – and that this fact was an important consideration warranting the extinguishment of asbestos victims' civil justice rights against Crown Cork & Seal. Mr. Behrens was then asked by members of the House Judiciary Committee to provide documentation of the pension amounts involved – without disclosure of the individual alleged pensioners' names - but Mr. Behrens' clients Crown Cork and ALEC never provided this information to that committee.

Additionally - Mr. Behrens was asked by one member of the House Judiciary Committee if it were not true that the federal government backs all pensions to the annual dollar amount level of \$40,000 – and Mr. Behrens admitted that the House Judiciary Committee was indeed correct.

Mr. Behrens was also unable to inform the House Judiciary Committee – in response to another question from a committee member at the House Bill 1430 hearing – as to whether any of

the 14 or so Crown pensioners living in North Dakota had pensions which paid these pensioners in excess of \$40,000 per year.

In addition, as the Virginia legislature was informed back in January, as it considered – and then defeated – Virginia House Bill 1762 -- the bottom line is that this “Crown Bill” is unconstitutionally retroactive, is unconstitutional special legislation, has enormous potential for adverse unintended consequences, will not improve Crown’s bond rating, and it will not even save *Virginia* jobs – a state where – *unlike North Dakota* – Crown does have manufacturing operations.

### **BACKGROUND**

Crown Holdings, the leading proponent of this bill, is the parent of Crown Cork & Seal. Crown Cork & Seal was founded in 1892.<sup>3</sup> *See Crown’s Website*, [http://www.crowncork.com/about/about\\_history.php](http://www.crowncork.com/about/about_history.php) (last accessed January 13, 2009). By 1927, Crown operated manufacturing plants in Germany, France, the United Kingdom, South America and in the Orient, and its net sales reached \$11 million. *Id.* Crown’s website boasts that it prospered during the 1930s, the decade of the depression, “selling half of the world’s supply of bottle caps.” *Id.* By 1949 — the year that the Journal of the American Medical Association recognized asbestos as a cause of cancer, and seven years after the Virginia Workers Compensation Act recognized asbestosis as a compensable occupational disease — Crown was already a sophisticated multinational corporation capable of availing itself of the finest medical, scientific, market and legal research and advise.

Twenty years later, in November 1963, Crown’s board of directors determined that it would be beneficial to the company to purchase 16,689 shares of the stock of Mundet Cork Corporation, which amounted to 70% of the total outstanding shares. ***See Exhibit 1, attached hereto, Purchase Agreement*** at 1. Mundet had two divisions. One of Mundet’s divisions competed

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<sup>3</sup> In connection with a major restructuring of corporate debt in 2003, Crown Cork & Seal reorganized itself and made itself a wholly owned subsidiary of Crown Holdings, Inc.

with Crown in the cork and seal market. Mundet's other division had been involved in the asbestos insulation business for decades, contracting to install other companies' asbestos insulation products in commercial and industrial properties, including schools and other government-owned premises. By the time Crown purchased its controlling share in Mundet, Mundet was manufacturing its own line of asbestos insulation products including 85% magnesia asbestos board, block and pipe insulation and an asbestos-containing calcium silicate insulation line. **See Exhibit 2, attached hereto**, *Excerpt of Deposition of E.J. Stansbury, Dec. 16, 1983*, at 8-14. Crown knew about Mundet's asbestos insulation business, but it purchased both divisions of Mundet without any attempt to limit the transfer of Mundet's preexisting asbestos insulation liabilities.

Three months later, Mundet — now a division of Crown — sold its thermal insulation division to another corporation, Baldwin Ehret Hill (BEH). **See Exhibit 3, attached hereto**, *Sale Agreement dated Feb. 8, 1964*. But while BEH purchased the insulation branch of Crown's Mundet division, it expressly agreed to absorb **only** Mundet's post-1964 liabilities. *See id.* at sixth page, Titled "Assumption;" *see also Satterfield v. Crown Cork & Seal Co.*, 268 S.W.2d 190, 2008 Tex. App. LEXIS 7473, at \*6 (Tex. App. Austin 2008). Thus Crown's Mundet division still owned all of Mundet's asbestos pre-1964 asbestos liabilities after the BEH sale.

In 1966 — two years after the BEH sale and two years after Selikoff's 1964 New York conference establishing asbestos as the sole known cause of mesothelioma — Crown purchased the remainder of Mundet's stock and formally merged Mundet, along with its preexisting asbestos liabilities, into itself. **See Exhibit 4, attached hereto**, *Merger Agreement*.

Even though Crown knew or should have know of the dangers of asbestos, knew that BEH refused to acquire the Mundet's pre-1964 liabilities, and knew that Mundet therefore retained those liabilities, Crown again chose not to take any steps to limit its assumption of liability. *Id.*

In 1976, Crown began to be named as Mundet's successor-in-interest in an increasing number of asbestos lawsuits. Crown filed a petition for declaratory judgment in its home state of Pennsylvania against four of its own insurance providers and Aetna Casualty & Surety Company "the primary liability insurance carrier for Mundet for the years 1950 through July 1, 1960" seeking to require them to defend it in the litigation and to pay any settlements or verdicts. *Crown Cork Seal, Inc. v. Aetna Casualty & Surety Co.*, 16 Pa. D. & C.3d 525, 527, 1980 Pa. Dist. & Cnty. Dec. LEXIS 248, 2 (Comm. Pleas Ct., Philadelphia Cty 1980) (*attached hereto as Exhibit 5*). In the petition, Crown "claim[ed] that all of these cases arise because of its ownership of Mundet Corporation and its Thermal Insulation Division." *Id.* It further averred that each of the insurance companies had insured either Crown or Mundet during various periods until Crown became self-insured in 1976. *Id.*

In 1985, Crown and its insurers reached a settlement under which the insurers agreed to compensate Crown "for settlement or judgment costs ("indemnity costs") and defense and other administrative costs." *Crown Cork & Seal, Inc. v. Emp. Ins. Of Wausau*, Civ. Action No. 99-4904, Memorandum Order (E.D. Pa. 1999) (*attached hereto as Exhibit 6*). This arrangement lasted through 1998 when Crown's insurance was depleted. *See Exhibit 7, attached hereto, 2007 Annual Report*, at 53, available at the weblink: <http://investors.crowncork.com/phoenix.zhtml?c=85121&p=irol-reports> (last visited January 13, 2009) ("Prior to 1998, the amounts paid to asbestos claimants were covered by a fund made available to Crown Cork under a 1985 settlement with carriers insuring Crown Cork through 1976, when Crown Cork became self-insured. The fund was depleted in 1998 and the Company has no remaining coverage for asbestos-related costs."). Apparently, for twenty years Crown and its insurers (including Mundet's insurer from 1950 to 1960) felt that the claims against Crown were sufficiently valid to warrant a significant outlay of capital. During that entire

twenty-year period, moreover, Crown did not seek the kind of legislation it seeks today.

Though Crown's insurance fund is now depleted, Crown is still liable for Mundet's asbestos liabilities. Even so, Crown admits in its latest annual report that "resolution of" Crown's asbestos liabilities "is not expected to have a material adverse effect on the Company's financial position." *Exhibit 7, attached hereto, 2007 Annual Report, at 55.*

Indeed, Crown still is a prosperous multinational corporation. Currently headquartered in Pennsylvania, as of December 31, 2007 Crown "operated 141 plants along with sales and service facilities throughout 41 countries and had approximately 21,800 employees." *Id.* at 1. Crown's most recent annual report boasts *net* sales of \$7.7 billion in 2007. *Id.* (emphasis added). And 73% of these sales were "derived from operations *outside* the United States, of which 74% of these non-U.S. revenues were derived from operations in the Company's European Division." *Id.* (emphasis added). To be sure, Crown's domestic sales are a fraction of its overall business; its Virginia operations are even smaller.

Crown's "products are sold in highly competitive markets" and Crown is a master in marketing and sales. *Id.* at 4. Applying that experience to legislation, Crown now attempts to peddle bills to State legislatures in an attempt to obtain special legislation to immunize itself against its own misjudgments.

Falsely characterizing itself as a naïve and innocent successor to Mundet, Crown has succeeded in having similar versions of North Dakota House Bill 1430 passed in Texas, Florida, Georgia, South Carolina, Ohio, Mississippi and Pennsylvania. But the Supreme Court of Crown's own home state, Pennsylvania, has already declared this legislation to be an unconstitutional deprivation of the vested or inchoate rights of the innocent asbestos victims against whom the act operates. *See Ieropoli v. AC&S Corp.*, 842 A.2d 919 (Pa. 2004). Similarly, Georgia invalidated a

larger act that contained a similar successor provision as being unconstitutionally retroactive. *Daimler Chrysler Corp. v. Ferrante*, 637 S.E.2d 659 (Ga. 2006). And the Texas Supreme Court is currently considering a similar challenge. See *Robinson v. Crown Cork & Seal, Inc.*, 2008 Tex. Lexis 5 (Jan. 11, 2008); and see also *Braley-Satterfield v. Crown Cork & Seal, Inc.*, 268 S.W.3d 190 (Tex. App. 3<sup>rd</sup> Dist 2008) (holding the Texas statute unconstitutional).

In addition, bills such as North Dakota House Bill 1430 have been voted down in other states – including Delaware – the statutory home of a majority of the largest of America’s corporations.

Virginia legislators have been recently informed that Virginia House Bill No. 1762 – *North Dakota House Bill 1430's identical twin* – likewise, is unconstitutional special legislation which would deprive residents of the Commonwealth of Virginia of substantive vested or inchoate rights without due process of law in violation of Article I, § 11 of the Virginia Constitution and that may have far reaching consequences to Virginians. Virginia legislators have been told that Crown is the only entity that will benefit from this bill – and that accordingly, that accordingly, Virginia should reject it.

**I. NORTH DAKOTA HOUSE BILL 1430 – LIKE ITS TWIN, VIRGINIA HOUSE BILL NO. 1762 – IS UNCONSTITUTIONAL AND WILL DEPRIVE NORTH DAKOTANS OF SUBSTANTIVE PROPERTY RIGHTS WITHOUT DUE PROCESS OF LAW.**

Article I, section 11 of the Virginia Constitution states “no person shall be deprived of his life, liberty, or property without due process of law . . . .” Va. Const. Art. I, § 11.<sup>4</sup> The Virginia Supreme Court “has consistently held” that this clause “protects not only rights that have vested, but

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<sup>4</sup> As the North Dakota Supreme Court noted in *City of Belfield v. Kilkenny*, 2007 ND 44, P 7, 729 N.W.2d 120, 123 (N.D. 2007), the almost identically-worded Due Process Clause of the North Dakota Constitution is Article I, Section 12, which provides that, “No person shall . . . be deprived of life, liberty or property without due process of law.”

also substantive property interests which may ripen into vested rights.” *Norfolk Sch. Bd. v. U.S. Gypsum Co.*, 234 Va. 32, 38, 360 S.E.2d 325, 328 (1987). “Although a typical common-law plaintiff’s right to sue does not accrue until he has sustained injury, and the statute of limitations only then begins to run as to him, certain rights and obligations may have become fixed at an earlier time when the wrongful act was done — when the cause of action arose. Those rights may be vested rights, entitled to constitutional protection. *Even where not vested, they may be substantive rights which the legislature may not constitutionally abridge.*” *Roller v. Basic Constr. Co.*, 238 Va. 321, 328, 384 S.E.2d 323, 326 (1989) (emphasis added); *see also Norfolk Sch. Bd.*, 234 Va. at 38, 360 S.E.2d at 328 (“It is immaterial to our decision whether this right is characterized as ‘vested’ or as ‘substantive.’”). In short, even though “[s]ubstantive rights” are “not necessarily synonymous with vested rights,” both are accorded constitutional protection. *Shiflet v. Eller*, 228 Va. 115, 120, 319 S.E.2d 750, 754 (1984).<sup>5</sup>

In reviewing this bill, it is important to keep in mind the longstanding distinction between rights of action and causes of action and the interplay between these two concepts and asbestos-related diseases. *See, e.g., Caudill v. Wise Rambler, Inc.*, 210 Va. 11, 13, 168 S.E.2d 257, 260 (1969); *Locke v. Johns-Manville Corporation*, 221 Va. 951, 957, 275 S.E.2d 900, 904 (1981); *First Va. Bank-Colonial v. Baker*, 225 Va. 72, 301 S.E.2d 8 (1983) (noting that the distinction between a right of action and a cause of action is “a distinction *with* a difference” (emphasis in original)). Correctly defined, a “right of action is the right to presently enforce a cause of action – a remedial right affording redress for the infringement of a legal right to some definite person; a cause of action is the operative facts which give rise to such right of action.” *First Va. Bank*, 225 Va. at 81, 301

<sup>5</sup>

Additionally, the Supreme Court has further noted that a “statute premised upon the police power ‘is subject to the constitutional guarantee that no property shall be taken without due process of law and where the police power conflicts with the Constitution the latter is supreme.’” *Norfolk Sch. Bd.*, 234 Va. at 39, 360 S.E.2d at 329. If this were not so, the Court continued, “no property right, indeed no personal right, could co-exist with it.” *Id.*

S.E.2d at 13.

In *Caudill*, the Court noted that “[t]here may be several rights of action and one cause of action and rights may accrue at different times from the same cause.” *Caudill*, 210 Va. at 13, 168 S.E.2d at 260. A *potential or inchoate cause of action* arises at the time of the negligent act. See *Caudill*, 210 Va. at 14, 168 S.E.2d at 259-60 (noting the plaintiff had “a potential cause of action for personal injuries” at the time of the breach of the implied warranty although she had not yet been harmed by the breach); *Shiflet*, 228 Va. at 121, 319 S.E.2d at 754 (noting that the plaintiff’s inchoate cause of action for contribution arose “at the time of the jointly negligent acts” but that his right of action did not accrue until he pays a claim for which others tortfeasors are liable); *Norfolk Sch. Bd.*, 234 Va. at 38, 360 S.E.2d at 328 (“We concluded that the right, although inchoate, is substantive, and we held that ‘substantive’ rights, as well as ‘vested’ rights, are included within those interests protected from retroactive application of statutes.”). The cause of action vests at the time the plaintiff is harmed or injured by the negligent act. See *Locke*, 221 Va. at 957, 275 S.E.2d at 904 (noting that a “cause of action does not evolve,” or vest unless there is a duty, breach of the duty, and a harm or damage to the plaintiff). Once a cause of action vests, a right of action may accrue. But “[t]here is no right of action until there is a cause of action.” *Id.*

Normally a right of action and a cause of action accrue at the same time. But in occupational disease cases, this is not necessarily so. Asbestos-related diseases, in particular, have latency periods of 10 to 50 years from exposure to diagnosis. And an asbestos-induced tumor may begin to develop in a victim as long as 10 years before it is diagnosed. See *Exhibit 8, attached hereto, Excerpt of Trial Testimony of Dr. John Maddox, March 28, 2007*, at 764-65, 769-70. According to *Locke*, once “the tumor – the hurt – the harm – the injury” occurs, the victim has a vested cause of action. *Locke*, 221 Va. at 958, 275 S.E.2d at 905.



Yet, by operation of *North Dakota Century Code Section 28-01.3-08(4)* – a statute directly analogous to its similar Virginia Code counterpart, § 8.01-249 (4) – a right of action for an asbestos-related disease does not accrue until “the injured person has been informed of discovery of the injury by competent medical authority and that the injury was caused by exposure to asbestos as described in this section . . . “ (*emphasis added*). So, asbestos disease cases are particularly emblematic of the distinction between rights of action and causes of action.

Therefore – under either North Dakota law – or Virginia law – if a person was exposed to insulation manufactured or installed by Mundet, that person may own a substantive inchoate cause of action against Crown — Mundet’s legal successor-in-interest — from the time he was exposed in the 1950s or early 1960s. See, e.g., this principle as implicit in the holding of the North Dakota Supreme Court in *Biesterfeld v. Asbestos Corporation of America*, 467 N.W.2d 730, 736-739 (N.D. 1991).

For example, if the asbestos-caused tumor began to grow in the year 2000 (after a typical 40 to 50 year latency period from the time of exposure) – then the plaintiff’s *cause of action* technically would have vested in 2000 — the time when the plaintiff was harmed. But if the cancer is not diagnosed for another nine years, until July 30, 2009, then the plaintiff’s *right of action* would not accrue until that time.

Given this hypothetical, and assuming North Dakota House Bill 1430 or Virginia House bill 1762 is enacted and becomes effective on August 1, 2009 (*July 1, 2009 for the Virginia statute*), Crown’s statute would *retroactively* extinguish the following substantive rights: (1) the plaintiff’s inchoate cause of action, a “substantive property interests which may ripen into [a] vested right,” *Norfolk Sch. Bd.*, 234 Va. at 38, 360 S.E.2d at 328, which had existed for 40 to 60 years from the time of exposure, and (2) the plaintiff’s vested cause of action which matured in 2000 and has

existed for 9 years, and (3) assuming the Plaintiff had filed, but not tried, his case prior to July 1, 2009, the plaintiff's accrued right of action on that cause of action. *See the final section of North Dakota House Bill 1430, which provides that, "(t)his chapter applies to all asbestos claims filed against an innocent successor on or after the effective date of this Act [August 1, 2009]. This chapter also applies to any pending asbestos claims against an innocent successor in which trial has not commenced as of the effective date . . . . "*

The fact is that because of this interplay between inchoate substantive rights, vested causes of action, rights of action, and asbestos disease latency, Crown's bill is fatally and unworkably unconstitutional. Any claim filed even prospectively would necessarily involve a longstanding inchoate substantive rights dating back 40 to 50 years and likely a vested cause of action based on a tumor or fibrotic condition that has been developing in the victim, but was undiagnosed, for as many as ten years before the claim is filed. Crown's statute will unavoidably retroactively destroy "substantive property interests which may ripen into vested rights," *Norfolk Sch. Bd.*, 234 Va. at 38, 360 S.E.2d at 328, and ongoing vested rights, and "the retroactive application of a statute impairing a 'substantive' right violates due process and is therefore unconstitutional." *Potomac Hospital Corp. v. Dillon*, 229 Va. 355, 360, 329 S.E.2d 41, 45 (1985).

## **II. CROWN'S BILL IS VIOLATIVE ARTICLE I, SECTION 21 --THE EQUAL PROTECTION CLAUSE OF THE NORTH DAKOTA CONSTITUTION.**

Article I, Section 21 of the North Dakota Constitution, described by the North Dakota Supreme Court in *Dickie v. Farmer Union Oil Company*, 2000 ND 111, 611 N.W.2d 168 (N.D. 2000), as the "Equal Protection Clause of the North Dakota Constitution" provides as follows:

**N.D. Const. Art. I, §§ 21 (2008)**

### **Section 21. [Privileges or immunities]**

No special privileges or immunities shall ever be granted which may not be altered, revoked or repealed by the legislative assembly; nor shall any citizen or class of citizens be granted privileges or immunities which upon the same terms shall not be granted to all citizens.

**HISTORY:** *Const. 1889, Art. I, §§ 20.*

In *Dickie* -- decisional precedent which would likely provide the foundation for invalidating any law established by an enactment of House Bill 1430 -- the North Dakota Supreme Court declared unconstitutional -- *on Equal Protection grounds* -- the Product Liability Statute of Repose of N.D.C.C. Section 28-01.3-08, explaining as follows, in language particularly applicable to the current circumstances of House Bill 1430:

Section 28-01.3-08, N.D.C.C., as enacted by the legislature in 1995, provides in relevant part:

*28-01.3-08. Statute of limitation and repose.*

1. Except as provided in subsections 4 and 5, there may be no recovery of damages in a products liability action unless the injury, death, or property damage occurs within ten years of the date of initial purchase for use or consumption, or within eleven years of the date of manufacture of a product.

This Court, in *Hanson v. Williams County*, 389 N.W.2d 319, 328 (N.D. 1986), declared unconstitutional a substantively identical statute of repose, enacted by the 1979 legislature and codified at N.D.C.C. §§ 28-01.1-02.(1)

In *Hanson* we applied an equal protection analysis to the 1979 statute of repose and determined it involved important substantive rights requiring an intermediate standard of review:

A statute of repose period begins to run from the occurrence of some event other than the event of an injury that gives rise to a cause of action and, therefore, bars a cause of action before the injury occurs. A person injured after the statutory period of repose is left without a remedy for the injury.

*Id.* at 321.

*While there are economic consequences for manufacturers and their insurers underlying the legislation in question, we believe our focus must be on the individuals affected. We are unwilling to view human life and safety as simply a matter of economics. . . . The right to recover for personal injuries is an important substantive right. We conclude that the appropriate standard of review to be applied in the present case is the intermediate standard or the close*

correspondence test.

Id. at 325 (citation omitted).

The question, therefore, is whether or not there is such a close correspondence between this statutory classification and the legislative goals as would justify this classification.

Id. at 327. In performing the equal protection analysis in *Hanson*, this Court expressed its concern about statutes "which arbitrarily deny one class of persons important substantive rights to life and safety which are available to other persons." Id. at 328. This Court stated the legislature had failed to advance a basis for selecting the period of years for bar or repose other than the economic interests of the manufacturers and suppliers and concluded there was no close correspondence between the legislative goals and the classification created by the statute to withstand the equal protection challenge. Id. . . . . .

We have carefully reviewed the legislative history of the 1995 enactment of N.D.C.C. §§ 28-01.3-08 and we find no more supportive evidence demonstrating a close correspondence between the stated legislative objectives and the classification created by the 1995 statute of repose than existed in the 1979 enactment of its predecessor. There is simply no showing within the testimony or data submitted in consideration of the 1995 legislation that litigation brought by victims injured more than 10 years from the initial date of purchase of a product or 11 years from its manufacture, as compared to persons injured within those time periods, has caused inequity, unfairness, or unreasonable exposure and unpredictability for manufacturers or suppliers in civil litigation. There is simply no demonstration by the testimony or evidence submitted to the legislature which shows harm or prejudice to sellers and manufacturers resulting from damage awards against them for injuries incurred more than 10 years from initial purchase or 11 years from manufacture of defective products. We, therefore, hold there is not a close correspondence between the legislative objectives under N.D.C.C. §§ 28-01.3-08 and the classification created thereunder to withstand an equal protection challenge under N.D. Const. art. I, §§ 21.

Therefore, under this compelling authority of *Dickie v. Farmers Union Oil Company*, *supra*, where the "ten-year/eleven-year" Product Liability Statute of Repose of N.D.C.C. 28-01.3-08 could not survive the heightened level of scrutiny which the North Dakota Supreme Court applied in its "close correspondence" test under the North Dakota Constitution's Article I, Section 21, the "special legislation" proposed by House Bill 1430 would not even have a chance of being sustained in the face of an Equal Protection challenge.

**A. Crown's Bill Has The Potential To Release Or Diminish Crown's Liability To**

### **The State of North Dakota Or Its Political Subdivisions.**

Throughout the 1950s and early 1960s, Crown Cork & Seal's predecessor Mundet provided and/or installed asbestos insulation products to commercial buildings throughout the United States. *See, e.g., Exhibit 2 attached hereto, Excerpt of Deposition of E.J. Stansbury, Dec. 16, 1983, at 17* (testifying that Mundet provided asbestos thermal insulation "[o]n all the pipe and/or equipment like schools, hospitals, just commercial buildings.").

As an insulation contractor that may have provided or installed asbestos insulation to commercial buildings owned by the State of North Dakota or its subdivisions, Crown, as Mundet's successor-in-interest may be liable to the State of North Dakota in tort or for remediation or abatement costs.

### **B. Crown's Bill Is Drawn To Grant Crown a Special immunity Intended To Benefit A Single Private Corporation.**

House Bill 1762 has been crafted and tailored to grant a special immunity to one particular corporation – Crown. As was stated earlier, similar statutes have been passed with varying success in Pennsylvania, South Carolina, Florida, Georgia, Ohio and Texas. And as was discussed in Section I, this bill and other statutes like it provide a complete affirmative defense to successor liability for virtually all pending and all future claims.

But though such a defense is arguably available, we have been unable to discover any corporation other than Crown that has actually taken advantage of one of the already enacted statutes as a defense in any of these seven states. In Texas litigation, Crown itself did not dispute that the Texas statute creates a class of one, and it was unable to identify even one other possible member of the putative "class" defined by the statute. And Kevin Collins, Crown's expert who prepared a report on the fair market value of Crown's predecessor during the Texas litigation, testified that despite performing over 750 valuations a year, he did not know of a single company other than

Crown to which this statute would apply.

This likely is because the Crown's bill was plainly tailored to fit Crown's specific corporate history, and was not to be a general law designed to effectuate public policy. First, the details defining the class fit Crown perfectly. House Bill 1430 applies only to corporations (not any other form of business entity) that incurred successor asbestos liability in connection with a merger or consolidation, or based on the exercise of control or the ownership of stock of the predecessor before the merger or consolidation. Crown first acquired its successor liability by exercising control of Mundet after purchasing a majority of its stock, before later merging with it. **See Exhibits 1 & 4, attached hereto.** The bill applies only to corporations that did not continue in the asbestos business, which Crown claims it has not. House Bill 1430. And the bill contains a curious paragraph excluding from the effect of the bill "rights and obligations of an insurer, transferor, or successor under an insurance contract or any related agreements, including preenactment settlements resolving coverage-related disputes, and the rights of an insurer to seek payment for applicable deductibles, respective premiums, or self-insured retentions or to seek contribution for uninsured or self-insured periods or periods . . . ." House Bill 1430, Subsection 3 of the fourth Section of the bill. This provision describes Crown's liability insurance history, as set forth above under the Background section, to a tee. *See infra*, Background; **see also Exhibits 5, 6; Exhibit 7, at 53, said exhibits being attached hereto.**

Similarly telling are two details tied specifically to Crown's corporate history. First, Crown's formal merger with Mundet did not occur until 1966. **See, Exhibit 4, attached hereto.** The bill protects only those corporations whose first relevant successorship transaction occurred before January 1, 1972. *Subsection 3 of Section 1 of House Bill 1430.* Crown likely argues that this is the time to correspond to the promulgation of OSHA and that "innocent" successor corporations

would have been less likely to know of the dangers of asbestos before this time.

*In a fact which blatantly exposes the proponents' arguments with respect to the January 1, 1972 "backwards immunity" date in House Bill 1430 to be particularly without merit – Crown's specific predecessor – Mundet Cork – had been named as a defendant – and had been found legally liable – and/or had voluntarily entered into monetary settlements – in asbestos disease workers compensation cases dating as far back as the year 1954!* See, the treatise, *Asbestos: Medical and Legal Aspects*, Dr. Barry I. Castleman, Fifth Edition, Aspen Publishers, New York, (2005), ISBN 0-7355-5260-6, at pages 175 & 180-182, a copy of which excerpt being *attached hereto as Exhibit 12*.<sup>6</sup>

As an additional example – *the Virginia Workers Compensation Act recognized the deadly disease of asbestosis as a compensable occupational disease in 1942*, and Crown, as the owner of two plants in Virginia, is presumed to have actual knowledge of the Commonwealth's statutes. Moreover, the Journal of the American Medical Association reported the link between asbestos and cancer in 1949. But, of course, if either Virginia House Bill 1762 – or North Dakota House bill 1430 – had used these dates, it would not benefit Crown.

Second, Crown changed its state of incorporation from New York to Pennsylvania via a merger and consolidation in 1989. To accommodate this further transfer of successor liability, the bill provides that as long as the original transaction yielding successor liability took place before January 1, 1972, the bill's original limitation of liability survives intact through an infinite number of subsequent transactions, no matter when they took place. House Bill 1430, at Section 1, Subsection 4 thereof.

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<sup>6</sup> It should be noted that earlier editions of Dr. Castleman's treatise, "Asbestos: Medical and Legal Aspects", have been accorded "learned treatise" status – under court evidence rules, by the United States District Court for the District of North Dakota in *In re: North Dakota Asbestos Personal Injury Litigation No. 1*, 737 F.Supp. 1087, 1091 (D. N. D. 1990), and by the Delaware Supreme Court in *Nutt v. Nicolet*, 525 A.2d 146, 148 (Del. 1987), and both of these cases, and Dr. Castleman specifically, were discussed by the North Dakota Supreme Court in *Anderson v. A.P.I. Company*, 1997 ND 6, PP 6-19, 559 N.W.2d 204, 206-209 (N.D. 1999).

Because the current Crown corporation inherited its asbestos liability by virtue of the 1989 merger, the bill includes this successor to a successor extension of the January 1, 1972 cutoff date, another provision tailored to fit Crown's corporate history.

The bill itself does not contain any justification or explanation for the narrowly defined class that it protects. for the bill is to remove the junk or near junk status of Crown's corporate bonds. But, once again, this goal benefits only Crown, nobody else. Moreover, it is more likely that the junk status of Crown's bonds is due to the "highly leveraged" state of the company, apart from any asbestos liabilities. See **Exhibit 7**, 2007 Annual Report, at 8. Additionally, Crown's bonds have traded at or near junk level for years; long before it began peddling bills of this sort. See, e.g., Exhibit 9, *Los Angeles Times*, *Now's a Good Time to Buy Corporate Bonds, Pros Say*, C-4 (Aug. 26, 1999) (reporting in 1999 that "Crown Cork & Seal, the largest food and beverage can maker, sold \$350 million of three-year notes at a yield of 7.21%. The notes are rated "BBB" by Standard & Poor's, one letter grade above junk status.")). Finally, there has been virtually no litigation against Crown in Virginia. This firm has filed claims against Crown on only seven occasions in the past nine years. Even assuming the rating is due to asbestos litigation, passing this bill in Virginia when forty other states with more active Crown dockets have no such legislation will do nothing for Crown's bond rating.

Another basis for the bill, albeit one still benefitting Crown alone, is impending bankruptcy. But though Crown's annual reports bemoan its corporate debt, the fact remains that Crown Holdings' 2007 Annual Report announces net sales of \$7.7 billion (up from \$6.9 Billion in 2006), with more than 70% of those sales derived from operations outside of the United States. **Exhibit 7**, 2007 Annual Report, at 1. Crown's annual interest expense on its corporate debt, net of interest income, was \$274 million in 2006 and \$304 million in 2007. *Id.* at 21. Crown itself estimates that



“its probable and estimable liability for pending and future asbestos claims and related legal costs is \$201 [million] at the end of 2007.” 2007 Annual Report at 54. Thus, Crown’s estimate of its current and future asbestos liability is \$100 million **less** than just one year of interest on its corporate debt instruments. Further, these estimates have been incorporated into the company’s business through a pre-tax accounting charge, which is not an amount actually paid out in cash in a particular year, but a charge taken to incorporate all payments for current and future cases. *See id.* That is why Crown can declare to the SEC and its shareholders that “resolution [of asbestos-related claims and settlements] is not expected to have a material adverse effect on the Company’s financial position.” *Id.* at 55. As Crown’s public filings demonstrate, a class that by definition includes only Crown is not rationally related to the objective of saving “hard-pressed successors” from bankruptcy. Crown is not on the verge of bankruptcy, and its protests that it is in dire need of rescue by the Virginia General Assembly are belied by its own public filings.

Ultimately, both the bond rating issue and the bankruptcy issue are just proxies for Crown’s veiled threat that if the bill is not passed, its two Virginia plants will shut down and the workers at those plants will lose their jobs. But, again, this bill will have no impact on Crown’s bond rating when litigation is still ongoing in at least forty other jurisdictions, and Crown is not going to go bankrupt due its Virginia asbestos liability, if any Crown’s threat is nothing more than an attempt to coerce special legislation.

### **III. THE BILL RETROACTIVELY IMPAIRS CONTRACTS AND HAS ENORMOUS POTENTIAL FOR UNINTENDED CONSEQUENCES.**

Finally, the bill impairs the original arms length contractual arrangement negotiated between Mundet and Crown and erases the corporate liabilities Crown took on by purchasing the stock of and later merging with Mundet, even while Crown continues to reap the benefits of that purchase. The undisclosed and unforeseen consequences of passing this bill may be far reaching and would likely

involve Crown and its insurers, Mundet and its insurers, and Crown's and Mundet's successors, including the successors to Mundet's Thermal Insulation Division.

Corporate liabilities do not simply disappear with a change in corporate form; that is why the purported "innocence" of a particular corporation does not matter. Specific kinds of transactions have certain consequences. The general rule is that when a company buys the shares of another company, or merges or consolidates with another company, the predecessor ceases to exist and is merged into the successor or both cease to exist and are consolidated into a new corporation. Under these circumstances, the successor corporation retains the liabilities of the predecessor. *See, e.g.,* Va. Code Ann. § 13.1-897(4) ("All liabilities of each domestic or foreign corporation or eligible entity that is merged into the survivor are vested in the survivor"); 15 FLETCHER CYCLOPEDIA CORPORATIONS §§ 7121-22 (1999).

All corporations and their attorneys know this. Crown knew this in 1963 and again in 1966 when it deliberately entered into these contractual arrangements. This is well settled, predictable corporate law. And because it is so well-settled and predictable, corporations are able to rely on this law when they decide which course of action to take in an acquisition.

A corporation may choose to buy only the assets of another corporation, and not the liabilities, but that is not what happened here. Crown — a multi-million dollar, multi-national corporation — structured the transaction in which it acquired Mundet — a family owned business sold by the executors of the estate of Joseph Mundet. Crown decided to opt for a stock purchase and merger (instead of another form such as a limited asset purchase) in which it acquired Mundet's assets *and liabilities*. When Crown sold Mundet's thermal-insulation assets, by contrast, the buyer expressly assumed only the liabilities arising on or after the date of sale, *see Exhibit 3*, and therefore upon merger, Crown retained those Mundet liabilities that arose before the sale. This is consistent

with law of Virginia, New York, and Pennsylvania that liabilities stay with the surviving company following a merger. *See* Va. Code Ann. § 13.2-897 (4); N.Y. BUS. CORP. LAW § 906; 15 PA. CONS. STAT. § 1929. This is why Crown historically has not challenged its successor liability for compensatory damages.

Moreover, Crown avoids the fact that it has benefitted for over 40 years from its stock purchase and subsequent merger with Mundet. It purchased the majority of stock of Mundet, a strong competitor in a desired market, and obtained sought-after operations that reduced its costs. There can be no doubt that Crown benefitted all these years from that transaction. Yet Crown seeks to use changing corporate forms and special legislation to keep the benefits while jettisoning the liabilities at the expense of claimants. The law does not permit that kind of manipulation of the corporate form through special legislation.

The especially troubling thing about this bill is that it is likely to cause confusion and to radically change settled expectations regarding mergers, acquisitions, and assumptions of liability in corporate dealings. The assumption of liability rules noted above are longstanding, well known rules. This bill will inject a huge exception into those rules that courts and commentators will have to parse. Not only will the constitutionality of this bill be questioned but — assuming it is passed and survives constitutional scrutiny — the Virginia business community will have to determine what implications this bill will have on their future operations and acquisitions. If a company decides to acquire another company, could it possibly have successor purchased company status under the act? What does this mean in terms of the type of acquisition that the purchasing company should be undertake? What effect will that choice have on the purchasing company's liabilities, form, structure, assets, taxes, etc.? Will this act open the doors for other similar acts of special legislation that other companies may lobby for to obtain special privileges or immunities? And, if so, will the

exceptions ultimately swallow the general rules and completely destroy the current well settled and predictable nature of Virginia corporate law?

### **CONCLUSION**

House Bill 1762 is unconstitutional through and through for all of the foregoing reasons. It has been drafted to benefit only one entity, Crown. It impairs the substantive rights of Virginia's citizens and will upset the settled expectations of Virginia's businesses. It is not good for Virginia business or Virginia's citizens and should be rejected.

**2009 House Bill No. 1101**  
**Testimony before the Senate Industry, Business, and Labor Committee**  
**Presented by Rob Forward, Staff Attorney**  
**Workforce Safety & Insurance**  
**March 3, 2009**

Mr. Chairman, Members of the Committee:

My name is Rob Forward and I am a staff attorney with WSI. I am here on behalf of WSI to testify in support of House Bill 1101. WSI's Board of Directors supports this bill.

All substantive sections of this bill increase benefits to injured workers.

First, **Section 1** raises the amount of money paid to injured workers who have children from ten dollars per child per week to fifteen dollars per child per week. It is fair to characterize this type of benefit as a bit of an oddity in the workers compensation industry because most systems recognize that the amounts paid to injured workers for wage loss are already designed to account for people who have children, and an additional benefit for children is not considered logical. We point this out because WSI does not maintain that this benefit is one upon which a person can raise child, and that it should not be considered in that way. The increase that is now being proposed was also proposed during the last legislative session. The research conducted then showed that this type of benefit is paid in only six jurisdictions. For the sake of comparison, four of those six jurisdictions pay the benefit in a weekly manner like North Dakota. Of those four, the highest rate is fifteen dollars per child per week in Rhode Island. The others pay five, six, and ten dollars per week.

Next, **Section 2** elevates the benefit paid to injured workers under the "preacceptance statute." Under this statute, WSI may pay disability benefits to an injured worker prior to determining whether their claim is compensable. Currently, the amount paid by WSI in these situations is 60 percent of the average weekly wage in the state, which is the minimum disability benefit allowed. As such, the amount payable to injured workers does not take into consideration what their actual wage loss happens to be. This bill directs WSI to pay the same disability benefit it would pay as if the claim was accepted. In other words, WSI would be able to pay injured workers preacceptance benefits using the statutory formula that is based on injured workers' actual wages. In practice, this change will raise the amounts payable to injured workers receiving preacceptance benefits who are earning more than the state's average weekly wage at the time of their injury.

**Section 3** and **Section 4** increase the maximum disability benefit from 110 percent to 125 percent of the state's average weekly wage. In other words, this change raises the cap on the wage loss benefits for injured workers. The current average weekly wage in North Dakota is \$626, so the increase would mean that the maximum rate would change from \$689 (110%) to \$783 (125%). Another way of explaining this is to say that an injured worker can now make up to \$61,000 per year (\$1,175 per week) in pre-injury wages before the cap applies.

**Section 5** of the bill increases reimbursements to injured workers who are being paid an apportioned benefit. For some injured workers, their injuries are not entirely caused by the workplace and so the law requires that their benefits be reduced according to the percentage of their injury that is attributable to some non-work related cause. Currently, WSI pays all benefits on these claims at a reduced percentage except for the costs of vocational rehabilitation, burial expenses, and dependency allowances. Those exceptions are paid on a 100 percent basis. WSI proposes to also pay travel and other personal reimbursement related to seeking and obtaining medical care on a 100 percent basis.

Next, **Section 6** of this bill increases the maximum amount of death benefits payable to a worker's spouse and eligible children from \$250,000 to \$300,000; it increases the current one-time death benefit for the spouse from \$1,200 to \$2,500; and the current one-time death benefit for children from \$400 each to \$800 each. And, although it does not appear in the language of the bill, the non-dependency death benefit would also be increased because it is calculated as a percentage of the dependency death benefit (five percent); this increase would be from \$12,500 to \$15,000. The death benefit cap was last changed in 2003 when the Legislative Assembly increased it from \$197,000 to \$250,000.

Finally, **Section 7** increases the maximum burial benefit from \$6,500 to \$10,000 for expenses for the handling of funeral arrangements. The last time this benefit was increased was in 1999 when the Legislative Assembly increased the benefit maximum from \$5,000 to the current level. For the sake of comparison, 46 of the 51 of workers compensation jurisdictions in the United States have a cap of less than \$10,000; three pay up to \$10,000; and the two highest jurisdictions pay up to \$15,000.

This concludes my testimony. I would like to answer any of your questions.

**HB 1762 Successor corporations; asbestos-related liability.**

**01/22/09 House: Failed to report (defeated) in Commerce and Labor (8-Y 14-N)**

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YEAS--Kilgore, Morgan, Hargrove, Purkey, Byron, Nixon, Hugo, Janis--8.

NAYS--Ware, R.L., Rust, Marshall, D.W., Saxman, Cline, Plum, Johnson, Joannou, Melvin, Alexander, Sickles, McClellan, Ward, Lewis--14.

ABSTENTIONS--0.

NOT VOTING--0.

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**HB 1762 Successor corporations; asbestos-related liability.**

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another bill?

*Summary as introduced:*

**Successor corporations; asbestos-related liability.** Limits the cumulative successor asbestos-related liabilities of a corporation to the fair market value of the total gross assets of the transferor determined as of the time of the merger or consolidation, and states that the corporation is not responsible for successor asbestos-related liabilities in excess of this limit, as the limit may be adjusted. The limitation does not apply to workers' compensation benefits, claims not constituting successor asbestos-related liability, or obligations under the National Labor Relations Act or collective bargaining agreements. Further, the limitation applies only to a corporation that assumed or incurred certain asbestos-related liabilities prior to January 1, 1972, and to any successors of that corporation. A corporation may establish the fair market value of total gross assets by reference to the going-concern value of the assets or to the purchase price attributable to or paid for the assets in an arm's-length transaction, by reference to the value of the assets recorded on a balance sheet if there is no other readily available information from which fair market value can be determined, or any other method reasonable under the circumstances. The limitation applies to all asbestos claims filed on or after July 1, 2009, and to all pending asbestos claims for which trial had not commenced as of such date, except that any provision that would be unconstitutional if applied retroactively will be applied prospectively.

*Full text:*

01/08/09 House: Prefiled and ordered printed; offered 01/14/09 090099588 (Impact statement)

*Status:*

01/08/09 House: Prefiled and ordered printed; offered 01/14/09 090099588

01/08/09 House: Referred to Committee on Commerce and Labor

01/22/09 House: Failed to report (defeated) in Commerce and Labor (8-Y 14-N)

2009 SESSION

INTRODUCED

090099588

HOUSE BILL NO. 1762

Offered January 14, 2009

Prefiled January 8, 2009

A BILL to amend the Code of Virginia by adding a section numbered 13.1-721.2, relating to asbestos-related liabilities of successor corporations.

Patron—Kilgore

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 13.1-721.2, as follows:

§ 13.1-721.2. Applicability of limitations on successor asbestos-related liabilities.

A. As used in this section:

"Asbestos claim" means any claim, wherever or whenever made, for damages, losses, indemnification, contribution, or other relief arising out of, based on, or in any way related to asbestos, to the extent such claims are recognized under the laws of the Commonwealth, including (i) any claim related to the health effects of exposure to asbestos, including any claim for personal injury or death, mental or emotional injury, risk of disease or other injury, or the costs of medical monitoring or surveillance; (ii) any claim made by or on behalf of any person exposed to asbestos, or a representative, spouse, parent, child, or other relative of the person; and (iii) any claim for damage or loss caused by the installation, presence, or removal of asbestos.

"Corporation" means a corporation for profit, including a domestic corporation organized under the laws of the Commonwealth, or a foreign corporation.

"Successor" means a corporation that assumes or incurs, or has assumed or incurred, successor asbestos-related liabilities.

"Successor asbestos-related liabilities" means any liabilities, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due, that are related in any way to asbestos claims, and that were assumed or incurred by a corporation as a result of or in connection with a merger or consolidation, or the plan of merger or consolidation related to the merger or consolidation, with or into another corporation or that are related in any way to asbestos claims based on the exercise of control or the ownership of stock of the corporation before the merger or consolidation. The term includes liabilities that, after the time of the merger or consolidation for which the fair market value of total gross assets is determined under subsection F, are or were paid or otherwise discharged, or committed to be paid or otherwise discharged, by or on behalf of the corporation, or by a successor of the corporation, or by or on behalf of a transferor, in connection with settlements, judgments, or other discharges in the Commonwealth or another jurisdiction.

"Total gross assets" includes intangible assets.

"Transferor" means a corporation from which successor asbestos-related liabilities are or were assumed or incurred.

B. The limitations in subsection D shall apply to a corporation that is a successor and became a successor prior to January 1, 1972, and to any successors of that corporation.

C. The limitations in subsection D shall not apply to:

1. Workers' compensation benefits paid by or on behalf of an employer to an employee under Title 65.2 or a comparable workers' compensation law of another jurisdiction;

2. Any claim against a corporation that does not constitute a successor asbestos-related liability; or

3. Any obligation under the National Labor Relations Act (29 U.S.C. § 151 et seq.), as amended, or under any collective bargaining agreement.

D. Except as provided in subsection E, the cumulative successor asbestos-related liabilities of a corporation are limited to the fair market value of the total gross assets of the transferor determined as of the time of the merger or consolidation. The corporation is not responsible for successor asbestos-related liabilities in excess of this limitation.

E. If the transferor assumed or incurred successor asbestos-related liabilities in connection with a prior merger or consolidation with a prior transferor, then the fair market value of the total assets of the prior transferor, determined as of the time of the earlier merger or consolidation, shall be substituted for the limitation set forth in subsection D for purposes of determining the limitation of liability of a corporation.

F. A corporation may establish the fair market value of total gross assets for the purpose of the

INTRODUCED

HB1762

59 limitations under subsection D through any method reasonable under the circumstances, including:

60 1. By reference to the going-concern value of the assets or to the purchase price attributable to or  
61 paid for the assets in an arm's-length transaction; or

62 2. In the absence of other readily available information from which fair market value can be  
63 determined, by reference to the value of the assets recorded on a balance sheet.

64 G. To the extent total gross assets include any liability insurance issued to the transferor whose  
65 assets are being valued for purposes of this section, the applicability, assignability, terms, conditions,  
66 and limits of such insurance shall not be affected by this chapter, nor shall this chapter otherwise affect  
67 the rights and obligations of a transferor, successor, or insurer under any insurance contract or related  
68 agreement, including, but not limited to, rights and obligations under pre-enactment settlements between  
69 a transferor or successor and its insurers resolving liability insurance coverage, and the rights of an  
70 insurer to seek payment for applicable deductibles, retrospective premiums, or self-insured retentions or  
71 to seek contribution from a successor for uninsured or self-insured periods or periods where insurance  
72 is uncollectible or otherwise unavailable. To the extent total gross assets include any such liability  
73 insurance, a settlement of a dispute concerning such liability insurance coverage entered into by a  
74 transferor or successor with the insurers of the transferor before the effective date of this chapter shall  
75 be determinative of the total coverage of such liability insurance to be included in the calculation of the  
76 transferor's total gross assets.

77 H. Except as provided in subdivisions 1, 2, and 3, the fair market value of total gross assets at the  
78 time of a merger or consolidation increases annually at a rate that is equal to the sum of (i) the prime  
79 rate as listed in the first edition of the Wall Street Journal published for each calendar year since the  
80 merger or consolidation, unless the prime rate is not published in that edition, in which case a  
81 reasonable determination of the prime rate on the first day of the year may be used, and (ii) one  
82 percent. Notwithstanding the foregoing provisions of this subsection:

83 1. The rate to be determined in accordance with in the first sentence of this subsection is not  
84 compounded;

85 2. The adjustment of fair market value of total gross assets continues as provided in the first  
86 sentence of this subsection until the date the adjusted value is first exceeded by the cumulative amounts  
87 of successor asbestos-related liabilities paid or committed to be paid by or on behalf of the corporation  
88 or a predecessor, or by or on behalf of a transferor, after the time of the merger or consolidation for  
89 which the fair market value of total gross assets is determined; and

90 3. No adjustment of the fair market value of total gross assets shall be applied to any liability  
91 insurance that may be included pursuant to subsection G in the determination of total gross assets.

92 I. To the fullest extent permissible, courts shall liberally apply the limitations under this section to  
93 the issue of successor asbestos-related liabilities.

94 J. If any provision of this section or the application thereof to any person or circumstance is held  
95 invalid, such invalidity shall not affect the provisions or applications of this section that can be given  
96 effect without the invalid provision or application, and to that end the provisions of this section are  
97 severable.

98 K. This section shall apply to all asbestos claims filed on or after July 1, 2009, and to all pending  
99 asbestos claims for which trial had not commenced as of such date, except that any provisions of this  
100 section that would be unconstitutional if applied retroactively shall only be applied prospectively.

# PATTEN, WORNOM, HATTEN & DIAMONSTEIN, L.C.

DONALD N. PATTEN  
ROBERT R. HATTEN  
ALAN A. DIAMONSTEIN  
HENRY DUNCAN GARNETT, JR.<sup>1</sup>  
AVERY T. WATERMAN, JR.<sup>1</sup>  
ELEANOR WESTON BROWN<sup>2</sup>  
SOUTH T. PATTERSON  
JAMES H. SHOEMAKER, JR.  
HUGH B. MCCORMICK, III  
STEVEN A. MEADE  
DOUGLAS E. MILLER  
PATRICK R. PETTITT  
TODD M. LYNN  
WILLIAM W. C. HARTY  
JENNIFER WEST VINCENT

ATTORNEYS AND COUNSELORS AT LAW  
SUITE 300  
12350 JEFFERSON AVENUE  
NEWPORT NEWS, VIRGINIA 23602

(757) 223-4500

FAX (757) 249-3242

WRITER'S DIRECT DIAL: (757) 223-4530

WRITER'S E-MAIL: [dpatten@pwhd.com](mailto:dpatten@pwhd.com)

WEBSITE: <http://www.pwhd.com>

KEVIN M. DIAMONSTEIN<sup>3</sup>  
VERONICA E. MEADE SHEPPARD<sup>4</sup>  
LINDSEY A. CARNEY  
ERIN E. HIERONIMUS  
JASON E. MESSERSMITH

## OF COUNSEL

STANLEY W. DRUCKER  
WILLIAM M. MARTIN, III  
J. CONARD METCALF<sup>5,6</sup>  
ALLAN R. STALEY  
GARY M. DIMUZZO<sup>6,7</sup>

NEAL J. PATTEN (RETIRED)

THOMAS R. WATKINS (1925-1995)  
I. LEAKE WORNOM, JR. (1926-2008)

<sup>1</sup> Admitted in VA, DC and LA  
<sup>2</sup> Admitted in VA and NC  
<sup>3</sup> Admitted in VA, DC, PA and NY  
<sup>4</sup> Admitted in VA, DC and MD

<sup>5</sup> Admitted in CO and WA  
<sup>6</sup> VA Pending  
<sup>7</sup> Admitted in TX

January 23, 2009

The Honorable Benjamin L. Cline  
Virginia House of Delegates  
P. O. Box 406  
Richmond, Virginia 23218

Dear Delegate Cline:

Re: House Bill 1762 Relating to Asbestos-Related Liabilities  
of Successor Corporations

I have received information today regarding Crown Cork & Seal which I believe to be important, of which I wanted to make you aware. As you know, Crown Cork has always made the argument that they were never involved in the manufacture or sale of asbestos products and, therefore, they are different than any other company (such as Owens-Illinois) that did manufacture and sell such products.

I have enclosed an excerpt from the deposition from E. J. Stansbury which was taken in Texas on December 16, 1983. Mr. Stansbury was employed by Mundet Cork in 1945 and was still employed by Mundet Cork at the time of its purchase by Crown Cork & Seal in 1963. He worked for Crown Cork & Seal for 3 months until its insulation division was sold to another corporation. Mr. Stansbury testified on pages 23-24 as follows:

## Page 23

Line	10	A.	I worked with Mundet from 1945 until they sold
	11		their company.
	12	Q.	Who did they sell the company to?
	13	A.	Crown Cork and Seal.



**PATTEN, WORNOM, HATTEN & DIAMONSTEIN, L.C.**

The Honorable Benjamin L. Cline

January 23, 2009

Page 2

- 14 Q. Now, when Mundet sold to Crown Cork and Seal,  
15 did Mundet employees, that you know of, go to  
16 work for Crown Cork and Seal?  
17 A. Yes.  
18 Q. And did Crown Cork and Seal continue to sell  
19 Mundet Cork inventory?  
20 A. Inventory?  
21 Q. Yes.  
22 A. Yes, for a period of about three months. They  
23 only owned it for about three months.  
24 Q. And would this inventory include 85 percent  
25 magnesia products?

Page 24

- 1 A. Yes.  
2 Q. And did Crown Cork and Seal continue contracting  
3 insulation after the purchase of Mundet Cork  
4 Company?  
5 A. Yes.  
6 Q. And did Crown Cork and Seal continue with the  
7 same warehouses and same offices that were  
8 previously occupied by Mundet Cork Company?  
9 A. Yes.  
10 Q. Did Crown Cork and Seal continue using products  
11 and filling orders of products with the Mundet  
12 name on them?  
13 A. Yes.

\* \* \*

- 18 Q. Did the 85 percent magnesia products that you  
19 have described for us today that were manufactured  
20 and distributed by Mundet Cork Company contain  
21 asbestos during the entire period, that you know  
22 of, that you worked for Mundet Cork?  
23 A. Yes.

**PATTEN, WORNOM, HATTEN & DIAMONSTEIN, L.C.**

The Honorable Benjamin L. Cline  
January 23, 2009  
Page 3

As you can see, Mundet did sell asbestos insulation during the 3 months that it owned the insulation division of Mundet Cork. This is contrary to the representations that they have always made to members of the committee.

Very truly yours,

PATTEN, WORNOM, HATTEN &  
DIAMONSTEIN, P.C.

Donald N. Patten

DNP/jk

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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO AND AUSTIN DIVISIONS

ARTY A. HAWKINS, ET. UX. I  
VS. I  
FIBREBOARD CORPORATION, I  
ET. AL. I

CCS

DEPOSITION OF  
E.J. STANSBURY

COPY

taken on the 16th day of December, 1983, in the offices  
of Mr. Richard Mithoff, 3450 One Allen Center,  
Houston, Harris County, Texas, between the hours of  
1:40 p.m. and 3:40 p.m., pursuant to the Federal  
Rules of Civil Procedure.

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A-P-P-E-A-R-A-N-C-E-S

MR. ROSS CROSSLAND  
900 Milam Building  
San Antonio, Texas 78205  
Appearing for A.C. & S., Inc.

MR. TERRY FRY  
8 Greenway Plaza  
1200 Cashco Tower  
Houston, Texas 77046  
Appearing for Ryder Industries

MR. J. MICHAEL MYERS  
2000 Frost Bank Tower  
San Antonio, Texas 78205  
Appearing for Nicolet, Inc.

MR. ROBERT SCOTT  
800 Capital Bank Plaza  
Houston, Texas 77002  
Appearing for Combustion Engineering, Inc.

MR. THOMAS W. TAYLOR  
600 Conoco Tower  
5 Greenway Plaza  
Houston, Texas 77046  
Appearing for Nicolet, Inc.

MR. O.J. WEBER  
Mehaffy, Weber, Keith & Gonsoulin  
Interfirst Tower  
Beaumont, Texas 77702  
Appearing for the witness, Mr. E.J.  
Stansbury



1  
2 MS. JANE E. BOCKUS  
3 1805 N.B.C. Building  
4 San Antonio, Texas 78205  
5 Appearing for Kean Corporation

6 MR. MICHAEL S. NARSETE  
7 Mayor, Day & Caldwell  
8 North Tower Pennzoil Place  
9 Houston, Texas 77002  
10 Appearing for Pittsburgh Corning

11 MR. STEPHEN C. PERRY  
12 1300 American Bank Tower  
13 Austin, Texas 78701  
14 Appearing for Pittsburgh Corning

15 MS. M. PATRICIA ASHLEY  
16 Thornton, Summers, Biechlin,  
17 Dunham & Brown  
18 1900 Tower Life Building  
19 San Antonio, Texas 78205  
20 Appearing for Fibreboard Corporation

21 MR. R. LYN STEVENS  
22 Weller, Wheelus & Green  
23 Fifth Floor Petroleum Building  
24 550 Pannin Street  
25 Beaumont, Texas 77701  
Appearing for Fibreboard Corporation

MR. FRANK HARMON  
3300 Two Houston Center  
Houston, Texas 77010  
Appearing for Crown Cork & Seal

1 THEREUPON,

2 E.J. STANSBURY,  
3 being by me first duly sworn to tell the whole truth  
4 as hereinafter certified, testified as follows:  
5

6 DIRECT EXAMINATION

7 BY MR. BUDD:

8 Q Would you give your name, please?

9 A E.J. Stansbury.

10 Q And your address, Mr. Stansbury?

11 A 519 Heatherglen, Houston 77096.

12 Q Mr. Stansbury, can you tell us a little bit about  
13 your background, first beginning with your  
14 school, if any, as far as college education  
15 goes?

16 A I have a B.S. degree from Sam Houston State and  
17 the University of Houston.

18 Q And what was your primary interest of study  
19 there?

20 A Mechanical engineering..

21 Q And when did you receive these degrees?

22 A '42.

23 Q Could you tell us a little bit about your  
24 employment background, beginning with your  
25 work after graduating from college?

1 MR. HARMON: I will sustain that.

2 MR. WEBER: You don't want to  
3 ask him the real crucial issue  
4 then we have objections.

5 BY MR. BUDD:

6 Q Mr. Stansbury, how long --

7 A Are you-all through?

8 Q How long did you continue working for Mundet  
9 Cork Company?

10 A I worked with Mundet from 1945 until they sold  
11 their company.

12 Q Who did they sell the company to?

13 A Crown Cork and Seal.

14 Q Now, when Mundet sold to Crown Cork and Seal,  
15 did Mundet employees, that you know of, go to  
16 work for Crown Cork and Seal?

17 A Yes.

18 Q And did Crown Cork and Seal continue to sell  
19 Mundet Cork inventory?

20 A Inventory?

21 Q Yes.

22 A Yes, for a period of about three months. They  
23 only owned it for about three months.

24 Q And would this inventory include 85 percent  
25 magnesia products?

1 A Yes.

2 Q And did Crown Cork and Seal continue contracting  
3 insulation after the purchase of Mundet Cork  
4 Company?

5 A Yes.

6 Q And did Crown Cork and Seal continue with the  
7 same warehouses and same offices that were  
8 previously occupied by Mundet Cork Company?

9 A Yes.

10 Q Did Crown Cork and Seal continue using products  
11 and filling orders of products with the Mundet  
12 name on them?

13 A Yes.

14 Q And did you, as an employee, continue with the  
15 same employee benefits that you had with the  
16 Mundet Cork Company?

17 A Yes.

18 Q Did the 85 percent magnesia products that you  
19 have described for us today that were manufactured  
20 and distributed by Mundet Cork Company contain  
21 asbestos during the entire period, that you know  
22 of, that you worked for Mundet Cork?

23 A Yes.

24 MR. BUDD: I think that's all  
25 I have.



**TESTIMONY OF MARK BEHRENS, ESQ.,  
SHOOK, HARDY & BACON L.L.P.**

**ON BEHALF OF THE  
AMERICAN LEGISLATIVE EXCHANGE COUNCIL**

**IN SUPPORT OF HOUSE BILL 1430,  
AN ACT CONCERNING SUCCESSOR ASBESTOS-RELATED LIABILITY**

**BEFORE THE NORTH DAKOTA  
HOUSE JUDICIARY COMMITTEE**

**JANUARY 27, 2009**

For example, consider a corporation that has engaged in some kind of business activity that may give rise to liability. If the total gross asset value of that corporation were \$10 million, the maximum amount plaintiffs could collect from that company (even if the plaintiffs could take priority over all the creditors of the company) would be the total asset value of the company. But assume the same corporation merges into a successor corporation worth \$1 billion. Even though that successor itself did nothing wrong, it could be liable for up to its entire \$1 billion solely because the predecessor was merged into it. In mass torts situations like asbestos, when there are many claimants and scores of defendants are already bankrupt, an innocent successor corporation that is solvent can be unjustly singled out and threatened with bankruptcy for wrongs it did not do.

In some circumstances, the rule of successor liability can cause a tremendous injustice, as in the case of Crown Cork & Seal, the inventor of the bottle cap and one of the companies that has been swept into asbestos litigation by plaintiffs' lawyers searching for solvent defendants. Crown never manufactured, sold, or installed a single asbestos-containing product in the company's 100-year history. Yet, the company has been named in over 300,000 asbestos-related lawsuits because of its brief association with a dormant division of a competing bottle cap manufacturer over forty years ago.

In November 1963, Crown purchased a majority of the stock of Mundet Cork Co., a small family-owned manufacturer which made bottle caps, just as Crown did. Before the acquisition, Mundet had a small side business making, selling, and installing asbestos and other insulation. By the time of Crown's stock purchase, however, Mundet had shut down its insulation operations. Crown never operated the insulation manufacturing operation. Within ninety-three days after Crown obtained its stock ownership interest in Mundet, what was left of the Mundet insulation division — idle machinery, leftover inventory, and customer lists — was sold off by Mundet. Mundet also agreed not to enter that business again. Thereafter, Crown acquired all of Mundet's stock and

APPLICATION FOR CERTIFICATE OF WITHDRAWAL

OCT 24 97 5 0521

To the Secretary of State,  
State of North Dakota  
Bismarck, North Dakota

Pursuant to the provisions of Section 10-22-14 of the North Dakota Century Code, the undersigned corporation hereby applies for a Certificate of Withdrawal from the State of North Dakota, and for that purpose submits the following statement:

- (1) The name of the corporation is Crown Cork & Seal Company, Inc.
- (2) It is incorporated under the laws of Pennsylvania
- (3) That the corporation is not transacting business in the State of North Dakota.
- (4) It hereby surrenders its authority to transact business in the State of North Dakota.
- (5) It revokes the authority of its registered agent in the State of North Dakota to accept service of process, and consents that service of process in any action, suit or proceeding based upon any cause of action arising in the State of North Dakota during the time the corporation was authorized to transact business in the State of North Dakota thereafter be made on the corporation by service thereof on the Secretary of State of the State of North Dakota.
- (6) The post office address to which the Secretary of State may mail a copy of any process against the corporation that may be served on him is One Crown Way, Philadelphia, PA 19154-4599  
(Complete street address required. A post office box number may be added.)
- (7) The aggregate number of shares which it has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class, as of this date is:

Number of Shares	Class	Series	Par Value	Without Par Value
500,000,000	Common	-	5.00	
50,000,000	Preferred	-	41.8875	
30,000,000	Preferred	-	-0-	30,000,000

- (8) The aggregate number of its issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class, as of this date is:

Number of Shares	Class	Series	Par Value	Without Par Value
128,410,797	Common	-	5.00	
12,432,622	Preferred	-	41.8875	



(over)

- (9) On the date of execution of this application, the total value of issued or allotted shares of all classes was \$ PRIVATIZED  
(This figure needed for computation of additional license fees.)
- (10) On the date of execution of this application, the amount of stated capital of this corporation expressed in dollars was \$ PRIVATIZED  
(Stated capital is the sum of (1) issued par value, (2) consideration for no par value except amounts allocated to capital surplus and (3) other money transferred to stated capital.)

The figures in items 11 and 12 should be figures beginning with the date used as the close of business on the last annual report filed, and ending with the date of execution of this application.

- (11) During the period beginning on January 1, 19 96, and ending on December 31, 19 96, the value of all the property owned by the corporation wherever located was \$ PRIVATIZED and the value of all its property located within the State of North Dakota was \$ PRIVATIZED.
- (12) During the period beginning on January 1, 19 96, and ending on December 31, 19 96, the gross receipts of this corporation derived from its business operations wherever transacted was \$ PRIVATIZED, and the gross receipts of this corporation derived from its business operations transacted in whole or in part within the State of North Dakota for that period was \$ PRIVATIZED.

We the undersigned have read the foregoing application and know the contents thereof and verily believe the statements made therein to be true.

Dated: October 14, 19 97

By [Signature]  
(President or Vice President)

And [Signature]  
(Secretary or Assistant Secretary)

Office Use Only

Certificate No. \_\_\_\_\_

License Fee This Report \$ \_\_\_\_\_

Filing Date 10-25, 1997

Previous Fee Paid \$ \_\_\_\_\_

[Signature] By [Signature]  
Secretary of State

Balance Due \$ \_\_\_\_\_

Receipt No. \_\_\_\_\_



HB 1430

Crown Financials



# Form 10-K

CROWN HOLDINGS INC - cck

Filed: February 27, 2009 (period: December 31, 2008)

Annual report which provides a comprehensive overview of the company for the past year

For a copy-  
contact phone  
# 800-660-0000  
or use  
web site on p. 2



UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

**FORM 10-K**

(Mark One)

☒ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF  
THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2008

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number 0-50189

**Crown Holdings, Inc.**

(Exact name of registrant as specified in its charter)

Pennsylvania  
(State or other jurisdiction of incorporation or  
organization)

75-3099507

(Employer Identification No.)

One Crown Way, Philadelphia, PA  
(Address of principal executive offices)  
Code)

19154  
(Zip

Registrant's telephone number, including area code: 215-698-5100

**SECURITIES REGISTERED PURSUANT TO SECTION 12(b) OF THE ACT:**

Title of each class which registered	Name of each exchange on
Common Stock \$5.00 Par Value	New York Stock Exchange
Common Stock Purchase Rights	New York Stock Exchange
7 3/8% Debentures Due 2026	New York Stock Exchange
7 1/2% Debentures Due 2096	New York Stock Exchange

**SECURITIES REGISTERED PURSUANT TO SECTION 12(g) OF THE ACT:**

NONE  
(Title of Class)

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the  
Securities Act. Yes ☒ No ☐

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of  
the Exchange Act. Yes ☐ No ☒